



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CRM-M-41416-2024

DATE OF DECISION: 15.02.2025

MANOJ KUMAR ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Sherry Singla, Advocate with
Mr. Himanshu Singh, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 439 of the Cr.P.C. read with Section 483 of the BNSS, 2023 seeking the concession of regular bail for the petitioner in FIR No.21 dated 07.02.2024 under Section 22(C) of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Kotwali, District Bathinda.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘Copy of Ruqa, "SHO Police Station Kotwali, Bathinda today I, SI alongwith C Harinder Singh 1155, C Gurmej Singh 952, CC Lakhwinder Singh 2211, CC Swaranjeet Singh 626 were travelling on a government vehicle Scorpio bearing No.



PB65BF7691 which was being driven by PHG Kulwant Singh 33280 for the purpose of patrolling and checking the suspected persons, suspected vehicles and were going from Railway Station Bathinda to Mall Godown Road. At about 10:50 PM when the police party was about 15-20 karam ahead of Police Station Bathinda, then in the light of the vehicle, two persons were seen standing in a suspected condition nearby the gate of Mall Godown and out of them, one person was holding a transparent polythene in his hand and the second person was seeing something in the said polythene and while seeing the light of the vehicle, both the persons got perplexed and tried to hide the polythene behind them and then I, SI on the basis of suspicion got stopped the vehicle and with the help of the colleague employees, overpowered both the above said persons alongwith the transparent polythene bag, from which the intoxicating bottles were clearly visible. In order to join the independent witness on the spot, the passersby were stopped but since it was an odd time and was a winter season, everybody shown their helplessness and due to which the private witnesses were not got joined and then I, ASI got enquired the name and address from the overpowered persons and the person who was holding the polythene in his hand disclose his name as Manoj Kumar S/o Partap Singh R/o 103-D/25, Near Old Sabji Mandi, Main Bazar Bahadurgarh, District Jhajjar Haryana and the second person disclose his name as Vikramjit Singh @Vicky S/o Inderjit Singh R/o H. No. 13133 Street No. 8/5 Prajapat Colony, Namdev Road Bathinda. On the opening of the transparent polythene bag recovered from their possession, the bottles were clearly visible. On my checking, total 25 intoxicating bottles were recovered from the said polythene bearing ONEREX each weighing 100 ML, plastic and all the recovered bottles were bearing LIC No.-MNB/09/742, Batch No. ONCS-1911, MFG Date Feb-2023, EX-PARTE Date Jan 2025, MRP-150-00/RS is written. The accused person Manoj Kumar and Vicky could not produced any bill or permit at the spot for keeping in possession



of the said intoxicating bottles and then I, SI had put the recover 25 intoxicating bottles in the same polythene and prepared separate bundle. The above said bundle of the intoxicating bottles were sealed by me bearing my words KS and the sample seal was prepared separately and the seal after use was handed over to CC Harinder Singh 1155. Thereafter, the recovered bundle of the intoxicating tablets alongwith the samples seals were taken into police possession vide separate memo. The signature of the witnesses were taken on the memo. In this manner, the accused Manoj Kumar and Vikramjit Singh @ Vicky had committed an offence U/s 22 (C)/61/85 NDPS, Act for keeping in the possession of 25 intoxicating bottles without any bill or license and thereby, the ruqa is hereby sent for the registration of the case against the above said Manoj Kumar and Vikramjit Singh @ Vicky through CC Swaranjeet Singh 626 to the Police Station Kotwali, Bathinda. The case be got registered and the case number be informed. The special reports be issued and the concerned officers informed on DCR. I, SI alongwith colleague employees are busy in the investigation at the spot. SD/ SI, Karamjit Singh 842 / Bathinda, CI Bathinda dated 07.02.2024 at boundary of Mall Godown Road, Near Kotwali, Bathinda at 12:30 AM.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. As per the allegation, the petitioner was holding a transparent polythene bag containing 25 vials of ONEREX 100 ml without any licence. He seeks parity with the co-accused namely Vikramjit Singh @ Vicky who has already been granted concession of regular bail vide order dated 23.01.2025 passed in CRM-M-60741-2024, moreover, challan



in the present FIR stands presented on 30.04.2024 charges stands framed on 14.05.2024 out of 9 prosecution witnesses, only one PW has been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time. He has argued that the antecedents of the petitioner are clean, meaning thereby, he is not a habitual offender, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year and 5 months.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the allegations is serious in nature whereby the contraband recovered is commercial in nature but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year and 5 months, similarly situated co-accused has already been granted concession of bail by this Court vie order dated 23.01.2025, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt



is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 30.04.2024 charges stands framed on 14.05.2024 out of 9 prosecution witnesses, only one PW has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

Reliance can be placed upon the judgment of the Apex Court rendered in “***Dataram versus State of Uttar Pradesh and another***”, 2018(2) R.C.R. (Criminal) 131, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large



number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in



prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658

6. *The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*

7. *However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”*

Therefore, to elucidate further, this Court is conscious of the fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “**Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC

98. Besides this, reference can be drawn upon that pre-conviction

period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

5. **Relief**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

15.02.2025
anuradha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No