

2025:PHHC:016363



221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46942-2023
DECIDED ON: 04.02.2025

SATNAM SINGH @ SATTU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Madan Sandhu, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking regular bail to the petitioner in FIR No. 326, dated 26.11.2022, under Sections 21 and 22 of NDPS Act, 1985, registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. Facts

The facts as narrated in the FIR reads as under:-

SHO Police Station Sultanpur Lodhi, Jai Hind, today I ASI along with ASI Surjit Singh 1381/SC, Arvinder Jeet Singh 57, PHG Kuldeep Singh 28684 by boarding the private vehicle along with laptop, printer for searching the bad elements were going to village Chandigarh Basti, Pind Gilla, Dalla, Amarjitpur Maniala, Toti etc. for patrolling, when police party reached near the metal road Village Maniala and the Kacha path of Toti, then one young man was seen to

be coming on the motorcycle no. PB09-W-5798 Mark Pulsar, who after seeing the police party turned his motorcycle back side, and after throwing the weighty plastic bag in the side of path in grass, which was hanging with the handle of motorcycle, I ASI along with fellow companion nabbed him, and the attempt was made to associate the public witnesses, which was not possible then I ASI introduced him, that I am ASI Lakbir Singh posted at Police station Sultanpur Lodhi, and my name plate is hanging on my dress, who after asking by me told Satnam Singh @ Santu S/o Kartar Singh, R/o Village Toti, P.S. Sultanpur Lodhi, District Kapurthala, and on the inquiry regarding the thrown bag by him, he disclosed that same contain my medicine, when he was investigated with hard way, then he told after untying the same contain intoxicant tablets and heroin, then he picked up the plastic bag reaching there and same was untied picked by his hands and handed over to me, and after counting from one bag 1000 tablets color light orange without any mark, and from one small plastic bag heroin was recovered, and the recovered heroin was weighed with the computerized scale lying in the investigation kit, and 5gm was separated for the sample and remaining was found as 5gm, and recovered 1000 intoxicant tablets parcel was prepared and same is putting in the plastic bag and recovered gm heroin was put in the box as sample and parcel was prepared, the stamp was affixed by me ASI as LS and seal was affixed, and the seal of sample was prepared separately after using the stamp same was handed over to ASI Surjit Singh 1381, so the Satnam Singh @ Santu S/o Kartar Singh, R/o Village Toti, P.S Sultanpur Lodhi, District Kapurthala have committed the crime u/s 21/22/61/85 by keeping the 1000 intoxicant tablets and 10gm heroin in his possession, and with regard to the recovered intoxicant tablets he did not produce any bill license, so the Ruka is sent through SC Arvinderjit Singh 57/Kapurthala for recording the F.I.R. in P.S. Sultanpur Lodhi, and after recording the F.I.R. the number of the same be communicated, special report be prepared, and same be sent to the Higher Officer control room be informed through wireless, I ASI along with fellow companions are

present on the spot for investigation, today in the area of Village Toti, 04:20PM, Lakhvir Singh ASI Sultanpur Lodhi, dated 26.11.2022.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the investigating agency has violated the provisions of NDPS Act, as during the course of alleged recovery no independent witness was associated. He further submits that 1000 loose intoxicant tablets and 10 gm heroin have been shown to be recovered from the possession of the petitioner.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that the petitioner is involved in other cases also meaning thereby, he is a habitual offender.

4. Analysis

Be that as it may, considering the fact that the petitioner has suffered sufficient incarceration i.e. 1 year 8 months and 21 days, as is evident from the the custody certificate added with the fact that after framing of charges on 29.08.2023, out of total 10 prosecution witnesses only one has been examined so far, meaning thereby, conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2)*

R.C.R. (Criminal) 131. 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 basic and 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

5. DECISION:

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

In the afore-said terms, the present petition is hereby allowed.

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

04.02.2025

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*