



In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-41952 of 2025

Reserved On: 06.11.2025

Pronounced On: 07.11.2025

Kuldeep Singh alias Kala

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Surya Partap Singh.

Present: Mr. Tushar Sharma, Advocate
for the petitioner(s).

Mr. Rohit Bansal, Senior Deputy Advocate General,
Punjab, for the respondent.

Surya Partap Singh, J.

1. For the commission of offence punishable under Sections 21 and 29 of the 'Narcotic Drugs and Psychotropic Substances Act, 1985', hereinafter being referred as "the NDPS Act" only, the FIR No. 173 dated 13.06.2020 has been lodged in Police Station Sultanpur Lodhi, District Kapurthala, Punjab. During the course of investigation of above mentioned case, the petitioner was arrested on 21.03.2024. The petitioner is in custody since then, and therefore, for the concession of bail he has approached this Court, by virtue of present petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hereinafter being referred to as "BNSS" only. This is first petition for bail filed by the petitioner.

Briefly stating the facts emerging from the record are that the

FIR of this case came into being when as a barricade being manned by a police party headed by ASI Gurdeep Singh, a motorcycle being followed by a car was intercepted and on the basis of suspicion when search of the motorcycle was conducted, 1.5 kgs. of heroin was recovered from the possession of Davinder Singh alias Bara. As per the prosecution, at the time of above mentioned recovery of contraband, Davinder Singh alias Bara was driving the motorcycle and Balwinder Singh was the pillion rider. It has been further alleged that on recovery of above mentioned contraband, the requisite formalities with regard to sealing and seizure of contraband, lodging of FIR and arrest of accused were undertaken. According to prosecution, when the investigation was taken up, the co-accused suffered a disclosure statement wherein he nominated the petitioner.

3. Heard.

4. It has been contended on behalf of petitioner that the petitioner has already suffered a long incarceration for being in custody for a period of more than one and a half year, and that nothing has been recovered from the possession of the petitioner. As per learned counsel for the petitioner, he has been simply nominated on the basis of statement of his co-accused. The learned counsel for the petitioner has further contended that the disclosure statement suffered by the co-accused is inadmissible in evidence, as at the time of making the statement its maker was in police custody. As per learned counsel for the petitioner despite the fact that quantity of contraband recovered from the possession his co-accused comes within the ambit of commercial quantity, rigors of Section 37 of the NDPS Act are not attracted qua the plea of petitioner as nothing has been recovered from his possession.

5. Per contra, the learned State counsel has argued that the petitioner is an active member of a racket involved in the supply of narcotic substance, and that the disclosure statement suffered by the co-accused makes it abundantly clear that participation of the petitioner in the commission of crime is an established fact. According to learned State counsel, the allegations against the co-accused of the petitioner are that he was found in possession of commercial quantity of narcotic substance, and therefore, without satisfying the twin conditions enshrined under Section-37 of the NDPS Act, the petitioner cannot claim the benefit of bail. According to learned State counsel, if released on bail, the petitioner is likely to indulge in similar activities and therefore, he is not entitled for the benefit of bail.

6. The record has been perused carefully.

7. A careful perusal of record shows that in the present case following are the factors which are required to be taken into consideration before arriving at any decision:-

- i) that the petitioner has already suffered a long incarceration for being in custody for a period of more than one and half year;
- ii) that nothing has been recovered from the possession of petitioner;
- iii) that the petitioner has been implicated in the present case merely on the basis of disclosure statement suffered by his co-accused and that such disclosure statement was suffered by the co-accused when he was already in police custody. In view of above, there is a big question mark

with regard to credibility and admissibility of the disclosure statement suffered by the co-accused while in police custody;

- iv) that detention of the petitioner in judicial lock-up is not likely to serve any purpose;
- v) that nothing is left to be recovered from the possession of petitioner;
- vi) that there is nothing on record to show that if released on bail, the petitioner will tamper with the prosecution evidence or influence the witnesses.
- vii) that nothing has been recovered from the possession of petitioner, and therefore, rigors of Section-37 of the NDPS Act are not applicable to the present case.
- viii) that there is nothing on record to show that if released on bail, the petitioner will not participate/cooperate in the trial.

8. With regard to the legal aspect involved in the instant case, it is relevant to mention that the Hon'ble Supreme Court in the case of "***Dataram versus State of Uttar Pradesh and another***", 2018(2) R.C.R. (Criminal) 131, has observed that "*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. 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.”

9. The principles laid down by the Hon’ble the Supreme Court of India in the case of **‘Satender Kumar Antil Vs. Central Bureau of Investigation and Another’**, 2022 LiveLaw (SC) 577, are also relevant in this case. In the above mentioned case, it has been observed that *“the rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.”*

10. Recently, in the case of ***‘Tapas Kumar Palit Vs. State of Chhattisgarh’, 2022 INSC 222***, the Hon’ble Supreme Court of India has observed that *“if an accused is to get a final verdict after incarceration of six to seven years in jail as an undertrial prisoner, then, definitely, it could be said that his right to have a speedy trial under Article 21 of the Constitution has been infringed.”* It has also been observed by the Hon’ble Supreme Court of India in the above mentioned case that *“delays are bad for the accused and extremely bad for the victims, for Indian society and for the credibility of our justice system, which is valued. Judges are the masters of their Courtrooms and the Criminal Procedure Code provides many tools for the Judges to use in order to ensure that cases proceed efficiently.”*

11. 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 mandated by Hon’ble Apex court in ***“Balwinder Singh versus State of Punjab and Another”, SLP (Crl.) No.8523/2024***.

12. If the cumulative effect of all the above mentioned factors, involved in the instant case, is taken into consideration, it leads to a conclusion that the petitioner is entitled for the benefit of bail, and that the present petition deserves to be allowed.

13. Accordingly, without commenting anything on the merits of the case, the present petition is hereby allowed. The petitioner is hereby ordered to be released on bail on his furnishing personal bond and surety bond(s) to the satisfaction of learned trial Court, subject to the following conditions:-

- a) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority;
- b) that the petitioner shall at the time of execution of bond, furnish the address to the Court concerned and shall notify the change in address to the trial Court, till the conclusion of trial; and
- c) that the petitioner shall not leave India without prior permission of the trial Court.

14. In case, the petitioner violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to him shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

15. It is, however, made clear that any observation made here-in-above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

(Surya Partap Singh)
Judge

November 07, 2025

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No