



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45272-2024
DECIDED ON: 18.03.2025

GURPREET SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 seeking grant of regular bail to the petitioner in FIR No.233 dated 23.12.2023 under Sections 22 of NDPS Act, 1985 and Section 29 of NDPS Act as well as Section 408 of IPC (added later on) registered at Police Station City-1, District Sangrur.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“To SHO PS City-1 Sangrur, Fateh, Today I/SI alongwith HC Jaswinder Singh No.1259/Sangrur, No.234/Sangrur Senior and HC Sandeep Kumar Constable Kuldeep Singh No.1514/Sangrur in government vehicle Scorpio Gateway bearing registration No.PB13BE3707 driven by Senior Constable Anwar Khan No.1817/Sangrur were

going towards Ramnagar Basti Sangrur through bank of Minor in the area of Ajit Nagar Basti Sangrur in connection with patrolling and in search of suspected persons and when the police party crossed residential area of Ajit Nagar and turned towards Ramnagar Basti then at about 1.30 pm, one person who was coming by foot having black coloured polythene in his hand, on seeing the police party had thrown the polythene in bushes on the right side of the bank, upon which the strips of tablet scattered outside. Upon which I/SI, after getting my vehicle stopped, apprehended the above person and asked his name and address and he disclosed his name as Karan Chawria son of Suraj Parkash resident of Ganga Ram Basti Sangrur. Then I/SI checked the scattered strips thrown by Karan Chawria then it was found as Tramadol HCL SR Tablet IP-100mg TMD 100 SR. then on counting all the strips by me/SI, the total strips came out to be 90 having 10 tablets of each strips of Tramadol HCL SR Tablet IP-100mg TMD 100 SR, having batch No.TPT-00652 Mfg. 06/2023 Exp. 05/2025 M.R.P Rs. 180.00 PER 10 TABS. INCL. ALL TAXES. Then I/ASI put recovered 90 strips total 900 tablets of Tramadol HCL SR Tablet IP-100mg TMD 100 SR in the same black coloured polythene and further put the polythene having 90 strips total 900 tablets of Tramadol HCL SR Tablet IP-100mg TMD 100 SR in a cloth bag and prepared pulanda, which was served with my seal of HS. Sample seal was prepared separately and after use, the same was handed over to HC Jaswinder Singh No.1259/Sangrur. Thereafter I/SI took 90 strips total 900 tablets of Tramadol HCL SR Tablet IP-100mg TMD 100 SR in police possession alongwith sample seal vide recovery memo, upon which HC Jaswinder Singh No.1295/Sangrur and HC Sandeep Kumar

No.234/Sangrur put their signature as witness. Since the act of Karan Chawria by keeping intoxicant tablets in his possession fulfill the ingredients of Section 22/61/85 of NDPS Act so written rukka after typing and taking printout is being sent to police station through Senior Constable Kuldeep Singh 1514/Sangrur for registration of case against Karan Chawria son of Suraj Parkash resident of Ganga Ram Basti Sangrur. After registration of case, the FIR number be informed. Control room be informed through email. I/SI alongwith co-officials alongwith accused is busy in investigation at the spot. Sd/- SI Harchetan Singh.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused Karan Chawria, from whose possession recovery of 900 intoxicant tablets labelled as TMD-100 SR was effected and subsequently during interrogation the petitioner was planted with recovery of 9500 intoxicant tablets. It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that according to the FSL report dated 12.02.2024 as well the contraband in question has been verified and total 9,500 intoxicant tablets weighing around 3049.5 gm were recovered solely at the petitioner's instance. However, the State counsel

could not refute the claim that it was only after the petitioner's arrest that he was made to disclose the location of the 9,500 tablets of tramadol hydrochloride salt, which were found under a tree.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 02 months and 18 days for which the petitioner has suffered incarceration; the petitioner was nominated as an accused only on the basis of disclosure statement of co-accused Karan Chawria, from whose possession 900 intoxicant tablets were recovered; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 22.05.2024, charges have been framed on 29.11.2024 and out of total 22 prosecution witnesses, four witnesses have been given up so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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.

5. **RELIEF:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on him 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.

18.03.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No