

2025:PHHC:024105



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54252-2023 (O&M)
DECIDED ON: 19.02.2025

SORABH ALIAS SAURABH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

CRM-23383-2023

Application is allowed, as prayed for.

Copy of notification dated 25.03.2024 (Annexure P-5) is taken on
record with just exceptions.

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 439
Cr.P.C., seeking regular bail to the petitioner in case FIR No.0180 dated
22.09.2019, under Section 22 of NDPS Act, 1985, registered at Police Station
Division B, District Amritsar.

2. Facts

Facts as narrated in the FIR reads as under:-

*“Statement of SI Devinder Kumar No. 567/FZR P.S. B Division
Amritsar M.No. 8288042950. It is stated that I am posted as*

Investigating Officer in Police Station B-Division Amritsar. Today I SI alongwith ASI Amarjit Singh 4205 and HC Gurwinder Singh 363 were going in private vehicles in the search of bad elements and were present in Pataka market Jhazgarh when white colour Alto Car No PB-02DP 2624 driven by a clean shaven young boy came from Changrang Road and after finding the police party he got perplexed and tried to turn the car and I SI alongwith other team members on the basis of doubt stopped and on enquiry he disclosed his name as Saurav son of Surender Mohan resident of H. No. 1359 Khillona Bazar Katra Bhai Sant Singh Amritsar. I SI introduced and told my name, rank and place of posting to the accused Saurav and told him that there seems to be some intoxicant either with him or in his car and therefore your search as well as the search of the car is to be done and you have got a legal right to get the search done either from Magistrate or from Gazetted officer on which he stated that he want to get the search done in the presence of Gazetted officer. According Farad was prepared and I ASI from my Mobile number called Sh. Jaspreet Singh ACP/E-East Amritsar on his mobile phone and informed him about the same and requested him to come on the spot. After some time he came there in govt. vehicle PB 02-CR 2698 on the spot and after reaching there he disclosed his name, rank and place of posting to the accused Saurav and told him that he can get his search done from any Magistrate or Gazetted Officer on which he stated that he have full trust in him and he can conduct the search. Before making the search a ACP Sahib asked him to search him, his team members and his vehicle on which he stated that he have full trust in him. Consent memo was got prepared and an effort was made to join the independent witness from the public but nobody was ready for that and I SI on the instructions of ACP started searching the car and found four black colour polythene envelops under the driver seat. Three boxes of intoxicant tablets from the first envelope containing CLEVIDOL-SR and one box containing CAVILODOL-100 SR, each box

containing 500 tablets, total 2000 tablets whose salt was TARMADOL and in another envelope containing intoxicant tablets Of AMPRAX 0.50 total 600 tablets and 20 strips of intoxicant tablets of ALPRAFRESH 0.5 MG total 300 tables were in it whose salt is ALPRAZOLAM and four packets of intoxicant tablets brown colour on which RIDLEY was written and total 400 intoxicant capsules were recovered. One box of TRAMADOX injection was recovered from the fourth envelop in which 50 injections of TRAMADOL were recovered. The aforesaid tablets CLEVIDOL-100 SR and CAVILODOL-100 DR were put in one polythene envelop and parcel was prepared and marked with Number-1 and other intoxicant tablets AMPRAX 0.50 and ALPRAFRESH 0.5 MG were put in polythene plastic bag and was marked as Number-2, intoxicant capsules RIDLEY were put in third polythene envelop, was marked as number-3 and recovered intoxicant injections TRAMODEX was put in polythene envelop and marked as number 4 and then I SI sealed all the four parcels with seal D.K. and ACP Sahib put his seal of JS on it. I SI after using the seal handed over the same to ASI Amarjit Singh 4205 and ACP Sahib kept his seal with him. All the aforesaid parcels were taken into police possession by way of farad and the said farad was verified by ACP Sahib. Thereafter I SI took the jamatalashi of the accused and found four currency notes of Rs.100 which were taken into police possession by way of farad which was verified by ACP Sahib. The aforesaid accused Saurab could not produced any license on permit for keeping the aforesaid TRAMADOL tablets in his possession and statement was given after calling you on the spot. Sd/-Devinder Kumar SI."

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He further submits that the petitioner is in custody since 24.09.2019, and is a first time offender, as is not

involved in any other case. He contends that investigation in the matter is complete and nothing is to be recovered from the petitioner.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He submits that three boxes of intoxicant tablets from the first envelope containing *CLEVIDOL-SR* and one box containing *CAVILODOL-100 SR*, each box containing 500 tablets, total 2000 tablets having salt *TARMADOL* and in another envelope containing intoxicant tablets of *AMPRIX 0.50* total 600 tablets and 20 strips of intoxicant tablets of *ALPRAFRESH 0.5 MG* total 300 tablets having salt *ALPRAZOLAM* and four packets of intoxicant tablets brown colour on which *RIDLEY* was written and total 400 intoxicant capsules were recovered. One box of *TRAMADOX* injection was recovered from the fourth envelope in which 50 injections of *TRAMADOL* were recovered.

In the light of above, he prays for dismissal of the present petition stating that the recovery of contraband is commercial in nature.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 1 year, 9 months and 29 days and is not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 15.06.2020 and charges have been framed on 09.02.2024 and out of total 13 prosecution witnesses, only 3 have been examined so far. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is*

an exception” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of 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 Nimesh 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. **DECISION:**

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

(SANDEEP MOUDGIL)
JUDGE

19.02.2025

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>