

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

227

CRM-M-54362-2024

DATE OF DECISION: 04.02.2025

KULDEEP

..PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vikram Rana, Advocate with
Mr. Amit Yadav, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail for the petitioner in FIR No.372 dated 02.07.2024, under Section 22 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Old Industrial Area, District Panipat.

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

'To SHO Sahib, Police Station Old Industrial Area, Panipat, Jai Hind, Today I Sub Inspector along with Head Constable Kuldeep No. 92, EASI Joginder 1687 and Constable Ashish Kumar 1460 were present in a passenger vehicle Government Bolero No. HR06GV-5100 whose driver is EHC Satyawar 637, for patrolling and investigation near Bus Stand Saundhapur, when a special informer met the Sub Inspector and informed that Kuldeep son of Balbir Singh, resident of Ramnagar Colony, near Canal, Police



Station Old Industrial Area, Panipat, is coming from Ramnagar towards Jatal Road to sell a large quantity of banned injections, if an immediate raid is conducted then Kuldeep son of Balbir Singh, resident of Ramnagar Colony, near Canal, Police Station Old Industrial Area, Panipat, can be caught with the banned injections, On which the Sub Inspector, on finding the information credible, prepared a Notice u/s 42 of the NDPS Act for information to the officers. Register a report in diary of constable Ashish Kumar 1460 of old Industrial Area police station. It is being sent to Industrial Area, Panipat. The report should be registered, the diary should be prepared and the copy of the report should be informed and after taking my special informer along with my fellow employee, I leave for Ramnagar, Jatal Road, Panipat in a government vehicle, I Sub Inspector along with my fellow employee and the special informer have reached Ramnagar, Jatal Road, Panipat in a government vehicle. There the Sub Inspector, with the help of my fellow employee, started the barricading and after some time a person was seen coming from the Ramnagar Colony. The special informer indicated with his right hand that the person coming wearing a black shirt and lower is Kuldeep son of Balbir Singh resident of Ramnagar near canal police station old industrial Panipat who on seeing the police party standing in front turned back and started walking. The sub inspector with the help of fellow officer caught the said person at a distance of 15/20 steps and asked his name and address. The said person told his name as Kuldeep son of Balbir Singh resident of Ramnagar Colony near canal police station old industrial Panipat. The sub inspector gave a written notice to the said person Kuldeep under section 50 NDPS Act that I am sub inspector Rajendra Singh number 1517 ANC/AVT cell Panipat in police uniform. My name plate is attached on the uniform. You Kuldeep son of Balbir Singh resident of Ramnagar near canal police station old industrial Panipat are suspected. You have the legal right under section 50 NDPS Act that you can give your search in front of a magistrate or a gazetted officer. Or you can be produced for search in front of a magistrate or a gazetted officer. You are being given a notice of section 50 NDPS Act in front of the following witness. You should read and understand the notice and give your consent in this regard. Witnesses Head Constable Kuldeep No. 92 signed on the notice and the person mentioned signed after reading and understanding the notice and wrote in his reply notice



that I want to give my search in front of a gazetted officer. The witness and the person named Kuldeep signed the reply notice below which the sub-inspector as per rules informed the gazetted officer Shri Astitva Parashar Naib Tehsildar Panipat about the situation on his mobile number 9315320916 and requested him to come to the spot. He told that I will come to you after some time. During this time peoples going from there and present at the spot were informed about the situation and requested to join the investigation, one Devendra, son of late Surat Singh, resident of village Khalila Palahadpur, police station Samalkha, Panipat, agreed to become a witness and at 7.25 PM, he reached the spot in his private car TATA PUNCH, white colour. After informing him about the situation, the sub-inspector produced the above mentioned person Kuldeep before the gazetted officer Shri Astitva Parashar, Naib Tehsildar, Panipat. As per the instructions of the gazetted officer Shri Astitva Parashar, Naib Tehsildar, Panipat, the sub-inspector got his search conducted by EASI Joginder 1687, during which the sub-inspector did not find anything except the everyday items and a search memo was prepared by the body search officer. On which the witness named person Kuldeep and the gazetted officer signed their respective signatures. Then as per the instructions of the gazetted officer, the sub-inspector carried out the search of the said person as per the procedure. A transparent polythene bag was found in the right pocket of the lower worn¹⁰ by the said person Kuldeep. When it was opened and checked, it was found that the transparent polythene bag was found inside the pocket. When it was opened and checked, 08 buprenorphine injections were found in a plastic packing inside the polythene transparent colour bag, which were s buprenorphine injections, each of 02 ml, on which Mfg Lic No. DI 773 MB Batch Number 5938 Mfg. Date 04/2022 Exp. Date 03/2025 were found. The sub-inspector informed about the situation to drug inspector Vijay Raje Panipat on his phone number 7015067823 from his phone number 9416223117 and requested ✓ him to come to the spot, but the drug inspector told that today I am out of station for some work, the injections seized by you in the NDPS Act, but in future you can get your opinion about the injections recovered on any working day. The recovered 08 injections buprenorphine were again put in the same polythene transparent coloured bag along with packing and a bag was prepared and after putting it in the bag, the bag was

stamped with RS and a sample seal was prepared. On which the witness, the person mentioned Kuldeep and the gazetted officer signed. The videography of the spot was made by head constable Kuldeep no. 92 from his mobile phone as per the rules. After the seal was used, it was handed over to EASI Joginder 1687. The bag which was taken into possession by filling the search and seizure form of the above mentioned bag of Injections with stamp RS as evidence of the property, the person mentioned, the witness and the gazetted officer signed on the report. Which is the same During the investigation, constable Ashish no. 1460 of old industrial police station, Panipat, came to the spot for registering the case under section 42 NDPS Act. He presented the original notice under section 42 NDPS Act along with the copy of the report diary to the sub-inspector, which was taken and kept. The person mentioned above, Kuldeep, has committed the crime under section 22 of the NDPS Act by keeping 08 banned buprenorphine injections in his possession in the Bag mentioned above. Therefore, the written complaint is being sent to the police station of constable Ashish no. 1460 for the registered case. After the registered case no. should be informed through the form. Officer-in-charge should be informed through special report. Another investigating officer should be sent to the spot. Sub-inspector is present at the spot for investigation. after the passing of the complaint by constable Ashish No. 1460 at the police station, FIR No. 372 dated 02.07.24, section 22 NDPS, Police Station Old Industrial Area Panipat, was registered in the presence of ASI Sheeshpal and computer copies of the FIR were prepared. MHC of ANC was informed about sending a second investigator to the spot by phone and remaining copies of the FIR will be prepared and sent to the area magistrate and officers at Bajararia through e-mail and post.XXXX'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued the alleged recovery effected from the petitioner is 8 injections worth Rs. 1600/- and the FSL report in this regard is yet to be filed. He has further argued that the petitioner has no concern with the alleged offence and the alleged

recovery is planted one. He points out that trial is not moving at its proper speed and as after filing of the challan on 27.08.2024, charges are not yet framed therefore, it can be said that conclusion of trial would likely take long time, 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 7 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the contraband recovered cannot be assumed to be used for personal purpose or as medicine. Further, the petitioner is a habitual offender as he is involved in many other FIRS 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. 7 months and 1 day, the FSL report is yet to be filed and trial is moving at a snail's pace 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 27.08.2024 charges are yet to be framed, out of 18 prosecution witnesses, none 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.

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 land the petitioner in a situation of denial of the concession of bail.

5. Decision:

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

04.02.2025
anuradha

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