



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206

CRM-M-54023-2024 (O&M)
DATE OF DECISION: 19.05.2025

PRAVEEN KUMAR

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lakshay Bector, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)CRM-15938-2025

This application has been filed for placing on record copy
of statement of PW-2 Devinder Kumar.

For the reasons mentioned in the application, the
application is allowed and copy of statement of PW-2 Devinder Kumar
is taken on record.

Main case1. Prayer

This petition has been filed under Section 439 Cr.P.C.
(read with Section 483 of BNSS) grant of regular bail in FIR No. 94
dated 05.04.2023 registered under Sections 21, 21-C, 29 of The



Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. STF, Phase-4, Mohali, District SAS Nagar.

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

‘Copy of Ruqa, Statement ASI Paramjit Singh no. 462/Ludhi, Special Task Force Ludhiana Range, aged about 50 years (Mobile no. 96761-10462) stated that I am appointed in the special task force Ludhiana range. Today I with you along with Si Naresh Kumar no. 448/Ludhi, Si Jagtar Singh no. 638/Khanna, Senior Constable Vishal Kumar no. 3258/Ludhi and Lady Constable Manpreet Kaur no. 3479/ Ludhi as passengers in government vehicle Xyla no, PB-5-L-9163 whose driver is constable Lakhvinder Singh no. 3964/Ludhi was present at T-Point near Neelam Cycle Factory Vishwanath Mandir Marg area, PS Moti Nagar Ludhiana. At around 5:00 PM secret informant came present and inform to me in privacy that accused Mohammad Ishtiyag Sio Mohammad Mushtaq Rio House no. 6829/2, Gali no. 1, Mohalla Muslim Colony Sherpur Kalan, PS Moti Nagar Ludhiana, short haired, heavily built, whose age shall be about 21 years, along with his friend Praveen Kumar Sio Shankar Jha Rio House no.13484, Gali no.2, Mohalla Ramdit Nagar, Tibba Road Ludhiana, short haired, whose age shall be around 29 years, together both of them have been doing the business of selling heroin from a long time. Today Mohammed Ishtiyag and Praveen Kumar above named, are coming from house of Mohammed Ishtiyag, Mohalla Muslim Colony Sherpur Kalan Ludhiana on motorcycle Splendour no.PB-91-L-3149, black in colour to supply heroin to their customers and are coming towards Moti Nagar, Jamalpur Ludhiana area. If right now surveillance is conducted on reaching the area near the house of Mohammed Ishtiyag then above named Mohammed Ishtiyag and Praveen Kumar can be apprehended along with huge amount of heroin along with the above numbered motorcycle. In regards to receiving information



about heroine I have prepared a report U/S 42 of NDPS Act. After that only I have orally informed you about the information about heroine that I received from my secret informant. The information that I have received from my secret informant is trustworthy. According to the information given by the secret informant I have given you my statement. I have heard my statement, I have read it, it is correct. Investigation shall be done. Sign/-Paramjit.'

Today, reply by way of affidavit of Alok Shekhar, Addl. Chief Secretary to Government of Punjab, Department of Home Affairs has been filed by learned State Counsel, the same is taken on record.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that the petitioner was a pillion rider on the motorcycle Splendour no. PB-91-L-3149, which also do not belong to the petitioner but to the co-accused Mohammad Ishtiyaq. He would also submit that the alleged contraband i.e. 1 kg. 870 grams was recovered from the black coloured bag alleged to be carried on the shoulder of co-accused-Mohammad Ishtiyaq. He also refers to the deposition of PW-2 Devinder Kumar who is presently posted as ACP, North CP, Ludhiana. He has contended that the petitioner has taken friendly lift from co-accused-Mohammad Ishtiyaq and had no knowledge as to what the bag was containing. He would also derive advantage from the reply filed today by learned State Counsel, wherein as per paragraph No. 4, it is evident that on most of the dates, the accused could not be produced from the jail and delay in trial which took place is not attributable to



the petitioner being one of the accused in custody. He has further argued that the antecedents of the petitioner are clean. Moreso, the investigation in this case is complete as challan stands presented on 20.07.2023 charges stands framed on 16.04.2024 out of 20 prosecution witnesses, only 3 PWs have been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable 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.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail. He though seeks dismissal of the petition stating that huge quantity of recovery from both the accused persons have been effected but it cannot be disputed that black coloured bag was carried on the shoulder of the co-accused-Mohammad Ishtiyah and no recovery was effected from the present petitioner. He has admitted the fact that the trial is delayed on account of prosecution itself as accused was not being produced by the jail authorities, and the same cannot be attributed either to the petitioner or to the trial Court as well.

4. Analysis

Be that as it may, after having regard to the afore-said facts and after going through the contents of the affidavits whereby the State Counsel has admitted that trial is delayed on account of prosecution itself as accused is not being produced by the jail



authorities, and the same cannot be attributed either to the petitioner or to the trial Court as is evident from paragraphs No. 4 to 7 of the reply filed today, particularly which has resulted into action being taken against him of departmental proceedings, against L/SC Simarjit Kaur No. 2997/Ldh. who has been issued a censure order dated 28.12.2024 bearing order No. 8157-61/EC by Commissioner of Police, Ludhiana for non-appearance on 23.10.2024 without prior intimation.

Apart from that a departmental enquiry has been initiated against SI Makhan Ram No. 2814/Ldh, who failed to appear before the Trial Court on 27.01.2025 without any explanation. The said action has been taken after conducting preliminary enquiry and recommendations made by Assistant Inspector General of Police, ANTF, Ludhiana Range.

In light of the above and considering the other factors as such, the petitioner has already suffered sufficient incarceration i.e. 2 years, 1 month and 7 days 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 20.07.2023 charges stands framed on 16.04.2024 out of 20 prosecution witnesses, only 3 PWs have been examined so far which is sufficient for this Court to infer that the trial is moving a very slow speed and 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 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 “**Balwinder Singh versus State of Punjab and Another**”, SLP (Crl.) **No.8523/2024**. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;*

*And that each day is like a year,
A year whose days are long.”*

5. **Relief**

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

19.05.2025
anuradha

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