



219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55636-2024
DECIDED ON: 22.01.2025

HARCHAND SINGH

....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. A.D.S. Sukhija, Addl. AG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 54, dated 13.04.2024, under Sections 21 of NDPS Act, 1985, registered at Police Station Passiana, District Patiala.

2. Facts

The facts as narrated in the FIR reads as under:-

“This case was filed by ASI Kuldeep Singh No. 2728/Pt. Police Station Pasiona, District Court against Harchand Singh son of Hari Singh Resident of Village Langroi Police Station Pasiona District Patiala Under Sections 21/61/85 of the NDPS Act handed over to the police station of Mohan Singh 969 is present who is main jail, Chief Officer - Jai Hind, Police Station Pasiona at Sewa, Including Chamkaur Singh 497, Gavinder Singh 1640 and Mohan Singh 969 including Laptop, Printer, riding Private Vehicle which was stopped

at Checking point. The stop was present at village Korjiwala Patiala Sangrur Road then the time was around 1:30. PM: A motorcycle was coming from the Patiala side, but a young man riding it was seen, who, panicking at the sight of the police party standing in front of him, immediately stopped his motorcycle and turned back, taking out a waxed envelope from the front pocket of his shirt, and fell on the ground. But he dropped it and started trying to, slip away, which was stopped along with the help of his fellow employees and asked for his name, but when asked, he told his name as Harchand Singh, • son of Hari Singh, resident of village Langroi police station, Passiana, district Patiala. Whose age is about 35 years, height about 5'4", color is light brown and motorcycle number is PB 11BL 0535. Mr. Man informed the said Harchand Singh about his posting and position and told that I am working as an investigator at Mr. Kuldeep Singh Police Station Pasiana. Doubtful, but you have a legal right to have a gazetted officer or magistrate search the white wax envelope you dropped on the ground, you can be taken to them, or they can be called here. is, who thought for a while and said that I am sure only you, you can search for the wax envelope thrown down on the ground by me. Whose fard statement was prepared, read and recited. Fard statement agreed but Harchand Singh gave his testimony and S.Chamkaur Singh 497 and S.Gavinder Singh 1640 gave their statement as witnesses. Then picked up the wax envelope thrown on the ground by the said Harchand Singh and checked, from which white powder was recovered in another wax envelope of white color, about which the said Harchand Singh was asked, who told That it is a white narcotic powder, which was put in the same wax envelope and weighed, but including the envelope, the total • narcotic powder was 20 grams. The recovered narcotic powder was prepared by putting the wax envelope in a plastic box and then putting the plastic box in a cloth belt. Palanda was stamped with his seal letter KS. Sample stamp prepared separately. After the stamp, the reference was made to: Chamkaur Singh 497 Thana Pasiana. Fard seized drug powder. Fard Par: Chamkaur Singh 497, and Ga vinder Singh 1640 proved their 2

correct as witnesses. The said Harchand Singh has committed the offense under 21/61/85 NDPS Act by keeping 20 grams of narcotic powder in his possession. Therefore, I am sending the case against Harchand Singh to the police station of Mohan Singh 969 for the said crime. The case should be registered and the number should be removed from the file. I have the opportunity to check with fellow employees including employees at Village Kaurjiwala at 02:30 PM, but the registration of the case against the said accused was started and the record was completed. Copies of the FIR are being sent to the service of the District Magistrate Sahib and officers. In charge control room Patiala is being notified through e-mail. ORIGINAL RUKKA COPY FIR FOR FURTHER INVESTIGATION AVAILABLE.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits the petitioner has been falsely implicated in the present case being involved in other cases under NDPS Act and Excise Act. Moreover, the recovery whatsoever has been shown to be effected from the present petitioner is only 20 grams of heroin, which is non-commercial in nature.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that the petitioner is involved in other cases also.

4. Analysis

Considering the custody period already suffered by the petitioner i.e., 8 months and 9 days, as is evident from the perusal of the custody certificate and quantity of contraband i.e. 20 grams of heroin, which falls under non-commercial

quantity added with the fact that after framing of charges on 02.12.2024, out of total 11 prosecution witnesses none has been examined so far, meaning thereby, conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the 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 *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.

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

5. **DECISION:**

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

22.01.2025

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*