

2025:PHHC:051949



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55954-2024
DECIDED ON: 23.04.2025

HARBANS KAUR ALIAS MADO

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: None.

SANDEEP MOUDGIL, J (ORAL)

1. The Punjab & Haryana High Court Bar Association and Bar Council of Punjab & Haryana High Court have decided “**No work day**” for today i.e., 23.04.2025 on account of sudden demise of Sh. Bhupinder Singh Rathore, oldest member of the Bar Council.
2. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail for the petitioner in FIR No.111 dated 01.09.2024 under Sections 22, 29 of NDPS Act, registered at P.S City Samana, District Patiala.
3. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“At this time it is registered that one ruqa from SI Ajit Kaur 120/PR PS City Samana has been received in the PS by hand of Husanpreet Singh 199/PTL for the registration of case against Paramjit Kaur wife of

Karamjit Singh and Maninder Singh Binder son of Amar Singh residents of Muradpura, PS City Samana, District Patiala, under section 22/61/85 NDPS ACT, The contents of ruqa are: "To, the SHO PS City Samana, Jai Hind, Sir, today I SI along with ASI Rajvir Singh no.. ASI Beant Singh no. 422/PTL. HC Pardeep Singh no. 439/PTL, NC Gagandeep singh no. 3303/PTL, L/HC Jaspreet Kaur 3381/PTL, CT Husanpreet Singh no. 199/PTL in private vehicle having laptop and printer along were present in the revenue limits of Kachhi Puli (temporary bridge), near Aggarsen Chowk, Samana in relation to patrolling and checking of suspicious persons and bad elements, meanwhile it was time around 7:15 PM, a secret informer came present and informed to I SI that Paramjit Kaur wife of Karamjit Singh resident of Muradpura aged about 35 years, colour complexion dusky, built heavy who is wearing Salwar suit and Maninder Singh Binder son of Amar Singh resident of Muradpura aged about 38 years, colour complexion dusky, built normal, wearing pant-shirt have reached City Samana from their village on foot to sell intoxicant tablets. At this time they are coming towards Peer Baba Chitti Dheri, side lane of minor canal via going through Namdhari Colony. Samana. If their checking be done then intoxicant tablets in heavy quantity can be recovered from them. Information is credible and reliable. On which the secret informer was discharged thankfully. The act of said Paramjit Kaur, Maninder Singh Binder son of Amar Singh residents of Village Muradpura by keeping intoxicant tablets in this manner fulfils the ingredients of commission of offence under section 22/61/85 NDPS Act. Therefore I am sending the ruqa to PS after getting it typed in laptop and by taking its printout by hand CT Husanpreet Singh 199/PTL for the registration of case against said Paramjit Kaur and Maninder Singh Binder under the said offence. Kindly inform the number of the file after registering the case and inform control room Patiala. I SI along with fellow policemen am leaving for near Peer Baba chitti Dheri, Namdhari Colony, Samana after getting aware them about secret information. In the revenue limits of: Kachhi Puli (Temporary Bridge), Aggarsen Chowk, Samana, 8:00 PM. "

4. It is pleaded in the petition that the petitioner has been falsely implicated in the present case and alleged recovery of contraband i.e., 342 intoxicant tablets was not effected from her conscious possession. Perusal of the

petition further shows that the false implication of the petitioner is only based in retaliation of written letter dated 11.06.2024 submitted by mother-in-law of the present petitioner. It is categoric stand taken in the representation that when the entire family was present at around 8.00 p.m on 10.06.2024, SI Ajit Kaur and HC Gagan Singh of P.S City Samana forcibly entered into the house and conducted search while demanding gratification of Rs.30,000/- or she would be implicated in false case. It is under backdrop of these circumstances that the petitioner has been allegedly involved in the instant FIR for recovery 342 intoxicant tablets. It has also been pleaded in the petition that similarly situated co-accused namely Paramjit Kaur has already been granted the concession of regular bail vide order dated 10.02.2025 passed in CRM-M-55120-2024.

5. As per custody certificate produced in the Court by the Pervi Officer, the petitioner has suffered incarceration for a period of 7 months and 19 days and is not involved in any other case, meaning thereby he is a person of clean antecedents.

6. Be that as it may, considering the fact that the petitioner has already suffered incarceration of 7 months and 19 days; similarly situated co-accused has already been granted the concession of bail added with the fact that investigation is completed and after framing of charges on 21.01.2025 out of total 10 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.

7. 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.”

8. 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.

9. 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.

10. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

11. The petition in the aforesaid terms stands allowed.

12. The Jail Authority, concerned are directed to intimate the said order to the petitioner-accused.

(SANDEEP MOUDGIL)
JUDGE

23.04.2025

Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No