



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-55768-2024

DATE OF DECISION: 09.01.2025

LAKHWINDER SINGH ALAS LAKHA SINGH
...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Manpreet Ghuman, Advocate for the petitioner(s).
(through Hybrid Mode)

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

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 439 of the Code of Criminal Procedure (483 BNSS,2023) for grant of regular bail to the petitioner in FIR No. 91 dated 08.03.2024 registered under sections 15/29/61/85 of NDPS Act, Police Station City Barnala, District Barnala.

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

‘Copy of ruqa, 'Office Incharge PS City Barnala Fateh today I, Sub Inspector along with ASI Naib Singh 576/BNL, Hav.Daljit Singh 745/BNL and C.Gurjit Singh No.143/BNL in official vehicle No.PB-13BA-1824 driven by ASI Amarjit Singh 434/BNL along with laptop, printer and investigation kit was going towards Jail Barnala from Barnala City via Bajakhana road in connection with patrolling and checking of suspicious persons, when police party reached pul drain Bajakhana Road in the jurisdiction of Barnala then at about 1:40 PM, the police party saw a young boy sitting on the bank drain on right side having a



plastic bag and I got stopped vehicle for checking him on the basis of suspicion, then said young boy got panic and tried to slip from there, who was apprehended by police party and his name and address was asked. He told his name as Rajan son of Barkha Singh resident of Gali No.1, Ram Bagh Road, Barnala. Thereafter I tried to join private witness from nearby, but every person showed his own compulsion, due to which private witness could not be joined. Thereafter I, got introduced myself to above Rajan that 'I Yashpal, am Sub Inspector of Punjab Police and posted as Inspector in CIA Barnala. I have worn uniform as per my rank and my name plate is fixed. I have a doubt of having some intoxicant substance or any illegal article with you in your plastic bag, due to which I want to make search of plastic bag in possession of you, but you have legal right that if you want to get your plastic bag searched in presence of some gazetted officer or Magistrate Sahib then out of them any officer can be called at the spot or you along with plastic bag can be taken to them. Upon which said Rajan said to me that I have heard you entirely and have understood. I have full faith upon you. You can make search of my plastic bag. Upon which Rajan was informed about the notice under Section 50(1) ND&PS Act and notice and consent memo were prepared separately. Thereafter I opened the mouth of plastic bag in possession of above Rajan and checked it, out of same poppy husk was recovered. Recovered poppyhusk was weighted on weight and it was 12 Kg. along with plastic bag. Thereafter, I put recovered poppy husk in another plastic bag and prepared a parcel. The empty plastic bag was put in another plastic bag and parcel was prepared. Thereafter I put me seal YP on both the parcels and prepared a sample seal. After use I handed over seal to ASI Naib Singh 576/BNL. Thereafter I took above said parcels along with sample seal vide memos in to police possession. Recovery memo was prepared separately. Further personal search of above Rajan was conducted and one Mobile Marka OPPO touch screen black colour and Rs.370/- currency notes were recovered, which were taken into police possession vide separate memos, personal search memo was prepared separately. As such, Rajan have committed an offence



under Section 15/61/85 of NDPS Act by keeping poppy husk in his possession. As such, this ruqa is being sent to Police Station City through C.Gurjit Singh 143/BNL for registration of case against above said Rajan. After registration of case, higher officers and control room be informed. I, SI along with official, am busy in investigation at the spot. Sd/- Yashpal, CIA, Barnala dated 08.03.2024. Today in the area of pul Drain Bajakhana Road Barnala 3:45 PM.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the petitioner was granted anticipatory bail by this Court subject to joining investigation within seven days but due to communication gap the petitioner could not join the investigation within seven days, thereafter, on account of failure to do so, the petitioner was arrested and now he has been in custody for last more than 3 months. She has placed reliance upon the order dated 31.05.2024 passed by this Court in CRM-M-28652-2024 (Annexure P-2) wherein anticipatory bail was granted to the petitioner subject to his joining within one week after considering the petition on merits including recovery of 12 kg of poppy husk from the main accused and the petitioner's involvement came forth merely on the basis of the disclosure statement.

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 3 months and 16 days.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved in two more FIRs bearing FIR No. 3 dated 13.01.2018 registered under Sections 15/61/85 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Sadar Nabha and FIR No. 84 dated 29.05.2023 registered under Section 21 and 29 of the NDPS Act at P.S. Bhawanigarh but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Looking into the totality of the circumstances mentioned above, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 3 months and 16 days, no recovery was effected from him and was nominated in the present FIR only on the basis of the disclosure statement made by co-accused, more so, 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 07.10.2024 charges are yet to be framed and out of total 14 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

09.01.2025
anuradha

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