



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-56940-2024

DATE OF DECISION: 16.01.2025

RAJWANT SINGH ALIAS RAJU ...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rishu Mahajan, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 483 of BNSS for grant of Regular bail to the petitioner in FIR No.57 dated 29.07.2023 Under Sections 21(C)/29 NDPS Act 1985, P.S. Kiratpur Sahib, Rupnagar.

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

‘First Information contents: Copy of ruqa "Officer In-charge, Police Station Kiratpur Sahib. Jai Hind. Today, I ASI alongwith AS! Balvir Singh no. 572/R, ASI Joginder Singh no. 530/R, C. Gurjit Singh no. 913/R, C-II Parvinder Singh no. 380/R, in government vehicle bearing registration no. PB-65-AW-5132 driven by C. Himmat Singh no. 40/R, while patrolling on the directions of Inspector Satnam Singh, In-charge CIA Staff, Roopnagar, reached near Bus Stand Bunga Sahib in connection with checking of suspicious persons. At about 3 PM, secret informer came to me, the ASI and informed that one



Fortuner vehicle bearing registration no. PB-29-AE- 8391 of white is parked at a distance of 10 feet from the road in front of Bus Stand Bunga Sahib. On the driver seat, SohalLal alias Kala son of Malkit Ram, resident of village Khadian, Police Station SadarBanga, of Gaurav ORIGI WIDIGARH alias Billa, resident of village Ghanauli, Police Station Sadar Roopnagar are District SBS Nagar and on the conductor seat, Poonam wife sitting. Two clean shaven boys namely Veer Singh son of Balkar Singh resident of Atari, District Amritsar Rural and Baljeet Singh alias Beeta son of Pal Singh, resident of village Chicha, Police Station Gharinda, District Amritsar Rural are sitting on the rear seat. There is huge quantity of heroin in their vehicle. They have brought it from the border area and are looking for handing over the same to some customer. Cases regarding supply of heroin are already registered against them. SohanLal alias Kala is a proclaimed offender. In case, raid is conducted now, they alongwith the vehicle can be apprehended and huge quantity of heroin can be recovered from their vehicle. The information is true and credible. In this manner, Sohanlal alias Kala son of Malkit Ram, resident of village Khadian, Police Station SadarBanga, District SBS Nagar, Poonam wife of Gaurav alias Billa, resident of village Ghanauli, Police Station SadarRoopnagar, Veer Singh son of Balkar Singh, resident of Atari, District Amritsar Rural and Baljeet Singh alias Beeta son of Pal Singh, resident of village Chicha, Police Station Gharinda, District Amritsar Rural, by keeping in their possession heroin, have committed offence under section 21-61-85 of the NDPS Act. Therefore, ruqa, after being reduced into writing, is being sent to Police Station Kiratpur Sahib through C-II Parvinder Singh no. 380/R for registration of case against the above-mentioned accused persons. Case number be informed after its registration. Senior Officers and Control room be informed. Special Report be issued. Circle DSP, Shri Anandpur Sahib was informed by me, the ASI through mobile no. 98723-12196 and requested him to reach at the spot. MHC of Police Station



Kiratpur Sahib was asked to send some lady constable at the spot. I, ASI, along-with police, party am waiting at the spot for the DSP. At: - Bus Stand Bunga Sahib, at 4 PM sd-Kewal Singh.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the present FIR was registered on the basis of secret information to the effect that a car make 'Fortuner' bearing registration No.PB-29-AE-8391 was lying parked in front of Bus Stand, Shri Bunga Sahib wherein, Sohan Lal@ Kala was sitting on the driver seat and Poonam was sitting on the copassenger seat; Two clean shaven youths namely Vir Singh and Baljit Singh @ Beeta were sitting on the back seat of the car and huge quantity of heroin was lying in the car for selling the same to the customers and they could be apprehended red handed, if the raid be conducted. It is contended that the petitioner has been nominated on the basis of disclosure statement suffered by his co-accused namely Baljinder Singh @ Tota on 03.08.2023, who was also nominated on the basis of disclosure statement suffered by one Veer Singh @ Veeru on 02.08.2023 from 300 gram of heroin was recovered. Moreover, nothing has been recovered from the conscious possession of the present petitioner. He further submits that the petitioner was already in jail in another case i.e. FIR no. 96 dated 10.06.2023 and was not on bail in that FIR.

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 4 months and 21 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to produce any direct or indirect evidence against the petitioner to connect him with the recovery of contraband involved in the present case.

4. Analysis

Be that as it may, from the above discussion, it can be culled that no direct or indirect evidence against the petitioner is available to connect him with the recovery of contraband involved in the present case as the petitioner was already in jail in another case i.e. FIR No. 96, dated 10.06.2023 since 10.06.2023 whereas the instant FIR stands registered on 29.07.2024 and the petitioner was nominated on the basis of the disclosure statement dated 03.08.2023 suffered by his co-accused namely Baljinder Singh @ Tota.

During the course of hearing, learned State Counsel would though try to convince the Court with vulnerable argument to the effect that in the earlier FIR no. 96 dated 10.06.2023 registered against the petitioner, 6 kg Heroin was alleged to be recovered but only 5 kg Heroin was actually recovered by the police and 1 kg Heroin was left out and now in the present FIR that left out 1 kg. Heroin has been shown to be recovered from other co-accused persons i.e. from Sohan Lal @ Kala (recovery of 300 gram heroin), from Veer Singh (recovery



of 300 gram heroin), from Baljit Singh @ Beeta (recovery of 300 gram heroin) and from Poonam (recovery of 100 gram heroin) who are nominated in the present FIR.

The prosecution's current argument suggests that they could have included the names of the accused in the original FIR No. 96, dated 10.06.2023. However, given the present circumstances, it is evident that the petitioner is being wrongfully implicated without substantial evidence or material against him. The only basis for this implication seems to be that one kilogram of heroin, previously unaccounted for in FIR No. 96, has now been reportedly recovered from the aforementioned four accused in the current FIR

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 03.10.2024 charges are yet to be framed and out of 19 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

16.01.2025
anuradha

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