



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64223-2024
DECIDED ON: 18.03.2025

VISHAL KAPOOR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in case FIR No.169 dated 14.07.2024 Under Section 21 (Later on added Sections 22 and 29) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and Section 25 of Arms Act 1959 registered at Police Station Navi Baradari, District Jalandhar.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

"To the Chief Officer, Police Station Navi Baradari, Commissionerate Jalandhar "Jai Hind, "Today, I, SI, along with SI Surjit Singh 2446, SR/CT Ranjit Singh 1821, SRICT Sukhdev Singh 3176, CT Sandeep Kumar 1005, CT Jugraj Singh 2135, carrying a laptop, printer, and an investigation kit, set out in the government vehicle

PB 08-DG-9063 (Mahindra Bolero) driven by CT Lovepreet Singh 2339, for patrolling and searching for suspicious persons and drugs- related materials. We were present near BSF Chowk, Jalandhar, when a civilian approached me (SI) and provided information that within Jalandhar city, Jagrup Singh son of Tarlok Singh, resident of village Jama Rae, District Tarn Taran, Bhavjot Singh, son of Sarwan Singh, resident of village Dhogri, District Jalandhar, Aman, resident of village Johal Di Wala, District Tarn Taran and Happy, resident of Ladoo Kalsi Kala, District Tarn Taran, are involved in the business of selling heroin, illegal arms, and ammunition. They often call customers to deserted places and supply heroin and arms. Today, two of these individuals, Jagrup Singh son of Tarlok Singh, resident of village Jama Rae, District Tarn Taran and Bhavjot Singh son of Sarwan Singh, resident of village Dhogri, District Jalandhar, are coming in a white Swift car (registration number PB 63-D-6500) carrying heroin and arms, intending to sell them near the railway station side and Guru Nanakpura Phatak side. If patrolling is conducted in these deserted areas, both individuals, along with the car, heroin, and arms, can be caught. Since the information is reliable and credible, it fulfils the requirements of the crime under Sections 21-61-85 NDPS Act and 25/54/59 Arms Act. A report under the mentioned sections is being written, and CT Jugraj Singh 2135 is being sent to the police station for case registration. After the case is registered in the records, the case number will be communicated. The concerned officers and the control room may be informed. Special reports be issued and sent to the area magistrate and senior officers. Control Room Jalandhar is also being informed. I, SI, along with the accompanying staff, am proceeding to the area described

by the civilian. Present near BSF Chowk, Jalandhar, at 4:30 PM. Signed/- Mewa Singh."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused Ashish Taneja and thereafter 4900 intoxicant tablets of Tramadol Hydrochloride were planted upon him on 03.08.2024 whereas infact nothing was recovered from the present petitioner. It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner has been apprehended with 4900 intoxicant tablets containing salt 'Tramadol Hydrochloride' to the tune of 975 grams, which falls under commercial category.

4. **Analysis**

Be that as it may, considering the custody period i.e. 07 months and 09 days for which the petitioner has suffered incarceration; the petitioner was not initially named in the FIR but was subsequently nominated as an accused merely on the basis of disclosure statement of co-accused Ashish Taneja; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 09.01.2025,

charges are yet to be framed and total 11 prosecution witnesses have been cited, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 Nimesh 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.

5. **RELIEF:**

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

18.03.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*