



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

230

CRM-M-60386-2024

DATE OF DECISION: 04.02.2025

GURPREET SINGH @ GEETU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Sandhu, 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 2023 for the grant of Regular Bail to the petitioner in FIR No.253, dated 03.11.2022, Under Section 21(c), 29 of N.D.P.S. Act 1985 Registered at Police station Sadar Fazilka District Fazilka Punjab.

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

‘Station House officer, P.S. Sadar Fazilka, today I SI alongwith ASI Bhagat Singh No.562/Fazilka, HC Satnam Singh No. 163/FZK., HC Davinder Singh 482/FZK. cm. Jaiparkash NO. 1095/FZK. Ct. Samit Kumar No. 986/FZK. were going on a govt. vehicle bearing NO.PB-05R-9846 which is driven by HC Kikkar Singh No.884/FZK and second police party including SC Ashok Kumar NO. 482/FZK, HC Pargat Singh No.1155/FZK, HC Amarjit Singh no.807/FZK, HC Veerpal kaur 422/FZK on a govt. vehicle bearing NO.PB-22R-0870 which was driven by Harjinder Singh NO. 977/FZK. carrying laptop, printer alongwith us regarding patrolling and checking of suspicious persons and carried out



barricading and Dhani Mandeep Singh Gill within the area of Kava Wali regarding suspicious persons that one motorcycle were seeing coming from village Mahtam Nagar to which I SI and fellow companions with the help of torch light signaled to stop the motorcycle on which two young persons and one female were riding and on seeing the torch light motorcycle rider suddenly stop the motorcycle and tried to turn back the motorcycle. then motorcycle stopped on which I SI with the help of companions of both police parties apprehended them on the basis of suspicion and enquired about their name and address, then motorcycle driver disclosed his name as Jagdish Kumar Deesha son of Joginder Singh son of Sher Singh r/o Dona Nanka, P.S.Sadar Fazilka, middle persons disclosed his name as Harjinder Singh Jinda son of Lakhmir Singh son of Suhar Singh r/o Dona Nanka, P.S. Sadar Fazilka and lady sitting as pillion rider disclosed her name as Kakko Bai wife of Jasvir Singh Jassa son of Gurdas Singh r/o Dona Nanka P.S. Sadar Fazilka then motorcycle on which one bag was hanging on the side on which I SI apprised aforesaid three accused about my name, rank and posting and told them that I, Amrinder Singh Gill Sub Inspector is posted as Incharge CIA Staff Fazilka. I have doubt of possessing some intoxicant substance in the bag hanging on the side of the motorcycle bearing NO. PB-22U-9140 mark TVS Star City plus of red colour in your possession because of which search of bag hanging on the side of motorcycle in your possession and your search is to be conducted but you have right according to the law under Narcotic Drug Psychotropic substance Act to get yourself and bag hanging on the side of motorcycle search to be conducted in presence of any Gazttted officer or Magistrate, who can be called on the spot, on which accused Jagdish Kumar Deesha, Harjinder Singh @ Jinda and Kakku Bai aforesaid said in separate-separate voice that we want to get our search and search of the bag on the side of the motorcycle to be conducted by any Gazetted officer on which I SI prepared separate-separate non consent memo of aforesaid 3 persons and witnesses put their witness on it then I SI called Sh. Subeg Singh PPS Deputy superintendent of Police, Sub Division



Fazilka on his mobile phone and apprised him regarding aforesaid incident and requested him to come on the spot. Sh. Subeg Singh PPS Deputy Superintendent of Police, Fazilka alongwith his gunman carrying weapon on a govt. vehicle came at the spot. To whom I SI disclosed about the situation then worthy DSP after verifying about the name and address of accused Jagdish Kumar Deesha, Harjinder Singh Jinda and Kakko Bai aforesaid and told them about his identity that I Subeg Singh PPS is posted as DSP Sub Division, Fazilka and is gazetted officer of Punjab Police Department. I have doubt of some intoxicant substance in the bag of your motorcycle bearing NO. PB-22U-9140 mark TVS Star City plus of red colour in your possession, therefore, search of your person and bag on the side of the motorcycle search is to be conducted but you have right according to the law under Narcotic Drug and Psychotropic Substance Act to get your personal search and search of bag on the side of the motorcycle in presence of some other Gazetted officer or Magistrate, who can be called on the spot, then accused Jagdish Kumar Deesha, Harjinder Singh Jinda and Kakko Bai aforesaid said in separate-separate voice that we have faith upon you and you can conduct our personal search and bag on the side of motorcycle in our possession search, on which separate-separate concerned memo of three aforesaid were prepared, witnesses put their witness on it, then I SI according to the instruction of DSP tried to join public witness in the police party before effecting search of bag on the side of the motorcycle bearing No. PB-22U-9140 mark TVS Star City plus of red colour in possession of aforesaid accused Jagdish Kumar Deesha, Harjinder singh Jinda and Kakko Bai but nobody could be found, then search of bag on the side of aforeisd motorcycle in presence of present witnesses was carried out by opening it then two separate-separate polythene of black colour were recovered from the bag, which were taken out from the bag, the mouth of first polythene bag of black colour was opened then substance in white colour cloth was cut and checked then heroin was recovered from it, which was weighed with computer scale and weight of heroin came out to be 1kg-300grams alongwith cloth and polythene, which was



put in plastic box and Sr. no.1 was marked on the parcel, then I SI opened the mouth of second black colour polythene bag out of which one transparent bag from which heroin was clearly visible was effected, which was also weighed with computer scale and came out 980 grams heroin was recovered from polythene bag, which was put in second plastic box and serial No.2 was marked on the parcel and I, SI duly sealed both parcels with my seal ASG. Sample seal ASG was prepared separately and after use was handed over to ASI Bhagat Singh 162/Fzk. then sh. Subeg Singh PPS Deputy Superintendent of Police, Fazilka, duly sealed parcel of plastic box carrying heroin weighing 1kg-30grams marked as Sr. No.1 and plastic box carrying heroin weighing 980grams marked as Sr. no.2 whose total weight is 2kg-10grams, with seal SS and verified aforesaid parcels and verified Sample seal with is seal SS and seal after use was kept by him, then I SI took parcel of heroin alongwith motorcycle bearing No. PB-220-9140 mark TVS Star City plus of red colour alongwith sample seal duly sealed in police possession vide separate recovery memo. Witnesses put their witness on it and worthy DSP verified the memo, then according to the instructions personal search of accused Jagdish Kumar Deesha aforesaid was conducted firstly, then Rs. 200/-currency note were recovered from right pocket of his trouser and one mobile phone mark Realme-9 touch screen of black colour was recovered and similarly personal search of accused Harjinder Singh Jinda was conducted and currency note of Rs.100/- was recovered from right pocket of trouser and one mobile phone marked Readme touch screen of sky blue colour was recovered, which were put in separate-separate polythene and taken into police possession through memo and according to the instruction of DSP woman Constable Veerpal Kaur No.422/FZK, conducted personal search of accused Kakko Bai, keeping in view that she is a woman. From whom neither any cash, jewellery, mobile etc was recovered, recovery memo accordingly was prepared, witnesses put their witness on it and DSP verified by the personal search memo. Offences under Section 21 (C)/29/61/85 of NDPS Act are made out against accused Jagdish Kumar Deesha, Harjinder Singh @ Jinda



and Kakko Bai aforesaid by keeping in their possession 2kg-10grams heroin from the bag on the side of the motorcycle bearing No. PB-22U-9140 mark TVS Star City plus of red colour in your possession. Hence, ruqa after being written against aforesaid accused is sent to police station through CT Sumit Kumar No.9863/FZK. regarding registration of FIR, FIR number may be intimated after registration of PIR. PCR/FZK may be informed, special reports may be issued. I am busy in investigation on the spot. Sd/ Amrinder Singh Gill CIA Incharge Fazilka dated 03.11.2022 within the boundary of Area Dhani Mandeep Singh Gill Kawawali.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that the petitioner was not apprehended at the spot and was named in the present FIR on the basis of the disclosure statement made by co-accused and the alleged recovery of 2 kg and 10 grams of Heroin was effected from other three co-accused persons. He further submits that three other co-accused persons namely Harjinder Singh @ Jinda, Jagdish Singh @ Disha and Kakko Bai from whom the alleged contraband was recovered have been granted concession of regular bail by this Court vide orders dated 08.07.2024 and 03.07.2024 passed in CRM-M-18336-2024, CRM-M-10132-2024 and CRM-M-M-24139-2024 therefore, prays for grant of regular bail to the petitioner.

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 1 year and 27 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 many other cases, meaning thereby he is a habitual offender, but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. **Analysis**

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year and 27 days, similarly situated co-accused have already been granted concession of bail by this Court, no recovery has been effected from the petitioner and 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 25.01.2024 charges stands framed on 27.05.2024 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

04.02.2025
anuradha

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