



**226 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-60741-2024

Date of Decision: January 23, 2025

VIKRAMJIT SINGH ALIAS VICKY

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sumeet S. Brar, Advocate for
Mr. Charanjit Singh, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail for the petitioner in FIR No.21 dated 07.02.2024, under Sections 22(c) and 27 of NDPS Act, 1985, registered at Police Station Kotwali Bathinda, Punjab.

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

'Today I SI along with C Harinder Singh 1155, C Gurmej Singh 952, CC Lakhwinder Singh 2211, CC Swaranjeet 626, were travelling on a government vehicle Scorpio No PB-65-BF-7691 which was being driven by PHG Kulwant Singh 33280 for the purpose of patrolling and checking the suspected persons suspected vehicles and were going from Railway Station Bathinda to Mall Godown Road At about 1050 PM when the police party was about 15-20 karam ahead of Police Station Bathinda.then in the light of the vehicle two persons were seen standing in a suspected condition nearby the gate of Mall Godown and out of them one person was holding a transparent polythene in his hand and the second person was seeing something in the said polythene



and While seeing the light of the vehicle both the persons got perplexed and tried to hide the polythene behind them and then 1 SI on the basis of suspicion got stopped the vehicle and with the help of the employees overpowered both the above said persons along with the transparent polythene bag from which the intoxicating were clearly visible In order to join the independent witness on the spot the passersby were stopped but since it was an odd time and was a winter season everybody shown their helplessness and due to which the private witnesses were not got joined and then I ASI got enquired the name and address from the apprehended persons, and the person who was holding the polythene in his hand disclose his name as Manoj Kumar S/o Partap Singh Rio 103 D/25 Near Old Mandi Main Bazar Bahadurgarh, District Jhajjar, Haryana and the second person as Vikramjit Singh @Vicky S/o Inderjit Singh R/o H.No 13133 Street No 8/5 Prajapat Colony, Namdev Road, Bathinda. On the opening of the transparent polythene bag recovered from their possession the bottles were clearly visible, on my checking total 25 intoxicating bottles were recovered from the said polythene bearing ONEREX each weighing 100 ML plastic and all the recovered bottles were bearing LIC No- MNB/09/742, Batch No ONCS-1911, MFG Date- Feb-2023, EXPARTE Date-Jan 2025, MRP 150-00/RS is written. The accused person Manoj Kumar and Vicky could not produce any bill or permit at the spot for keeping in of the said intoxicating and then I SI had put the recover 25 intoxicating bottles in the same polythene and prepared separate bundle. The above said bundle of the intoxicating bottles were sealed by me bearing my words KS and the sample seal was prepared separately and the seal after use was handed over to CC Harinder Singh 1155. Thereafter the recovered bundle of the intoxicating tablets along with the samples seals were taken into police possession vide separate memo. The of the witnesses were taken on the memo. In this manner the Manoj Kumar and Vikramjit Singh @Vicky had committed an offence Us 220/61/85 NDPS Act for keeping in the possession of 25 bottles without any bill or license and thereby the ruqa is hereby sent for the registration of the case against the



above said Manoj Kumar and Vikramjit Singh @Vicky through CC Swaranjeet Singh 626 to the Police Station Kotwali Bathinda. The case be got registered and the case number be informed. The special reports be issued and the concerned officers informed on DCR I SI along with colleague employees are busy in the investigation at the spot so SI Karamjit Singh 842/Bathinda CIA-Bathinda dated 07/02/2024 at of Mall Godown Road Near Kotwali Bathinda at 12:30 AM.'

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 and alleged recovery of 25 vials of ONEREX is not made from the conscious possession of the petitioner and there is non-compliance of Section 50 of NDPS Act, 1985. He further submits that the petitioner is in custody since 07.02.2024.

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 11 months 13 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by learned counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 30.04.2024 and charges have been framed on 14.05.2024 and there are two other cases pending against the petitioner meaning thereby he is a habitual offender.



4. Analysis

Be that as it may, from the above discussion, considering the fact that alleged recovery of 25 vials of ONEREX was not made from the conscious possession of the petitioner and there is non-compliance of Section 50 of NDPS Act, 1985, it can be culled added with the fact that the petitioner has already suffered sufficient incarceration i.e. 11 months 13 days, 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 30.04.2024, charges stands framed on 14.05.2024, out of 09 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 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 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

23.01.2025

Sangeeta

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