



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63824-2024
DECIDED ON: 25.03.2025

JASBIR SINGH @ JASSI

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms, Gagandeep Kaur, Advocate
for the petitioner.

Mr. B.S. Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No. 129 dated 15.02.2022 Under Sections 18, 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 at Police Station Assandh District Karnal.

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

“To The Head Officer Police Station Assandh, Jai Hind. Today I ASI alongwith EASI Surjit Singh No.714, HC Rajender Singh No.55, SPO Ram Niewas No.203 alongwith private vehicle alongwith Laptop, Printer were present at Bus Stand Jalmana for Patrolling in search of bad elements that one special messenger informed me by coming personally informed that Sonu son of Puran Chand Caste Balmiki

resident of Jalmana is coming from the side Village Kurlan on his Motorcycle without number Make CT-100 colour blue having heavy quantity of intoxicating material Gattu/Campher, who will come to Jalmana. If picket be laid on the bridge of Canal at Kurlana Road, then can be intercepted with intoxicating material Gattu/Campher. That informer is believable. That on this information I ASI after preparing report 42 NDPS Act separately, sent to the police station Assandh through SPO Ramniwas No. 203. That I ASI by informing about the information of Informer to the companions prepared raiding party, pickets were laid on the Canal Bridge of Jalmana to Kurlan road. That after about 10 minutes as per information of the Informer, Motorcycle without Number Make CT-100 colour blue seen coming, to whom I ASI stopped by signaling and by apprehending alongwith white weighed plastic bag kept on the Tank of Motorcycle inquiry about name and address. Then he disclosed his name Sonu son of Puran chand Balmiki r/o Jalmana Police Station Assandh District Karnal. To whom I ASI by giving Notice under Section 50 NDPS Act told that you Sonu son of Puran chand Balmiki r/o Jalmana is informed through Notice that I have doubt of having intoxicating material Gattu/Campher with you, you have full right that you can get search of yourself and the white colour plastic bag kept on the Tank of your motorcycle from Gazetted officer, Malkhana officer, Revenue Officer or Magistrate Sahib or Gazetted officer of police. Notice under Section 50 NDPS Act prepared separately. On which accused Sonu above and witnesses put their respective signatures. At this time By stopping the 3/10 M/Cycle riders and 8/10 passer byes passing from the road were asked to join the investigation by explaining them the circumstances, then all explaining their respective difficulty went from the spot. That due to lack of time notice could not be given. That after about 10 Minutes asked from the accused person Sonu above about the reply then he told that I am doing the work of selling intoxicating material Gattu/Campher from many days. I have intoxicating

material Gattu/Campher in the white colour plastic bag kept on the motorcycle, I have come to sell the same. I wish to get search myself before any gazette officer. That on contacting the Gazetted officer deputed as per the orders of the Government, the gazette officer of Civil Department Sh. Sumit Kumar SDO Irrigation Department Assandh I A.SI from my mobile number 95881-07185 by calling on his phone number 9999425486 requested to reach at the spot by explaining him the circumstances. That after 30 minutes Sh. Sumit Kumar SDO irrigation Department Assandh in his Government vehicle reached at the spot. That Sh. Sumit Kumar SDO Irrigation Department Assandh after investigation form accused Sor.u above, I ASI on checking the recovered Motorcycle without number Make CT-100 colour Blue found IMD2A18AY3JPH98181 its Chasis and Engine Number Number. DUYPUH25716. And asked to search the white bag kept on the motorcycle, as per orders I ASI brought into effect the search of the white Plastic Bag kept on the Motorcycle recovered from the above accused as per procedure, then on checking of the plastic bag colour white tied with white thread kept the Motorcycle without number Marka CT100 colour blue recovered, on penning after checking recovered six plastic white colour bottles, whose level have been removed, that all the plastic bottles were marked with number which which where weighed with the electronic weighing machine kept in the vehicle the weight of intoxicating material Gattu/Capher alongwith bottles Sr.No. 1 to 6 comes to 700 grn/700 gm. That the weight of plastic bottles alongwith intoxicating material Gattu/Campher and Plastic bag comes to 4KG 269 gms, and by putting the same in the same bag, and tying the mouth parcel was prepared. That on Parcel Seal GS/1 was put and sample seal GS/1 ny preparing on the difference cloth seal after use haded over to ASI Surjit Singh No.714. The parcel of Intoxicating material Gattu/Campher and Sample seal, were sealed by Sh. Sumit Kumar SDO Irrigation Department Assandh with his seal SS/1, kept the seal after use with him. That intoxicating material

Gattu/Campher weighing 4 Kg 259 Gm (Plastic Katta alongwith) Seal GS/1, SS/1 sealed and recovered Motorcycle without number Marka CT-100 Coilour blue were taken into possession by way of recovery memo. the accused Sonu above arid witnesses put their respective signatures and Sh. Sumit Kumar SDO irrigation Department Assandh attested the Memo parcel of Intoxiating material Gattu/Campher ALOGNWITH SAMPLE SEAL. At this time SPO Ramniwas No.203 Choki Jalmana after recording Rapat in Roznamcha came after about one hour from Police Station Assandh and that accused Sonu above accused by carrying intoxicating material Gattu/Campher weighing 4 KG 269 Gms (alongwith Plastic bag) on Motorcycle has committed offence under Section 18, 21, 25 of NDPS Act, therefore after writing against him for registration of case sent to the police station through HC Rajinder Kumar No.55. After registration of case number be informed. Special reports be sent to higher officers. I am the complainant of this case, therefore further investigation officer be sent on the spot, I, alongwith case property, witnesses, accused present on the spot.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that nothing has been recovered from the present petitioner and whatever recovery i.e. 6 plastic bottles of gattu/campher weighing 700 grams each total weight 4 kgs 269 grams, was effected that was from co-accused Sonu, on whose disclosure statement the present petitioner has been nominated as an accused in the instant FIR. He further contends that co-accused Sonu has already been granted the concession of regular bail by this Court vide order dated 21.05.2024 passed in CRM-M-16963-2024.

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 is a habitual offender as he is involved in four other cases, wherein in three cases he has been convicted.

4. Analysis

Be that as it may, considering the custody period i.e. 01 year, 09 months and 22 days for which the petitioner has suffered incarceration; nothing has been recovered from the present petitioner and whatever recovery was effected that was from co-accused Sonu, on whose disclosure statement the present petitioner has been nominated as an accused in the instant FIR, who has already been granted the concession of regular bail by this Court vide order dated 21.05.2024 passed in CRM-M-16963-2024 in addition to the fact that investigation is complete, challan stands presented to Court on 25.08.2023, charges have been framed on 06.04.2024 and out of total 13 prosecution witnesses only one witness has been examined so far, 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 *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 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.

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 concession of bail.

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.

25.03.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No