



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

233

CRM-M-65270-2024
DATE OF DECISION: 13.01.2025

MANISH SHARMA

...PETITIONER

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Saransh Sabharwal, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 482 of BNSS, 2023, seeking regular bail to the petitioner in case FIR No. 81, dated 11.09.2024, under Section 61(1) (a) Punjab Excise Act, 1914, registered at Police Station Sector 7, Panchkula.

2. Facts

Prosecution story set up in the present case as per the version in the FIR read as under :-

“Complaint as under, To the SHO PS Sector 7 Panchkula, R/Sir I Ravinder Kumar (Duty Magistrate) s/o Satish Kumar r/o village Bhadog District Ambala, Haryana. Presently I am TGT History Teacher at Govt Sr Sec School Toda Panchkula and I am posted at PGT History and I had duty as a Duty Magistrate during Haryana Assembly Election at Naka at sector 7 Panchkula. On 10.09.2024 at about 10 PM, I was on my duty. Other officials were also present along with me EHC Krishan Kumar 2/517 IRB, HGH Naresh Kumar



924 PKL and SPO Raj Paul 311 PKL and camera man Anurag. At about 11.15 one car came from Chandigarh side. Cra was stopped and during checking of car videography was done. One young boy was sitting in the car was asked for checking of one bag. The boy told that the bag contains the chemical. On checking of bag 25 bottles of Royal Stag Whisky and 275 bottles of Everyday Gold Whisky were found contained in the said bag and it was written only for sale in chandigarh was written. In the mean time young boy slip away from the spot. Maruti Suzuki Ertiga PB 01D 2022 driver Gurdev Mehra s/o Hardayal Singh r/o Targarh Pathankot Punjab 145025 and he told that he is working as driver and young boy has booked the car from sector 24 to Hardwar. That illegal liquor has been recovered from the bag. That necessary legal action to be taken against the young boy. Sd Ravinder Kumar.”

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 further contends that as per the allegations the petitioner was apprehended with the bag containing 25 bottles of Royal Stag Whisky and 275 bottles of Everyday Gold Whisky and slip away from the spot. The story put forth by the prosecution is highly improbable that 300 bottles of liquor are contained in a bag.

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 has suffered incarceration for a period



of 2 months and 2 days. He prays for dismissal of the present petition stating that the petitioner was apprehended with a large quantity of liquor and later on slipped away from the spot. He informs the Court that in the present FIR challan stands presented on 31.12.2024 wherein, the prosecution has cited total 10 witnesses.

4. Analysis

From the perusal of record, it can be culled out that as per the allegation the petitioner was apprehended along-with a bag containing 300 bottles of liquor, which is highly improbable as no body would carry such a huge quantity of liquor in a bag added with the fact that investigation is complete and challan stands presented on 31.12.2024 wherein, the prosecution has cited 10 witnesses, charges are yet to be framed, which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt.

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 law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail subject to his/her



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

13.01.2025
sham

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