



250 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-64524-2024
DECIDED ON: 09.01.2025

AMAR KAUR @ AMRO

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mandeep Kumar Dhot, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in case FIR No.86, dated 15.07.2023, under Section 22 and Section 29 (added later on), NDPS Act, 1985, registered at Police Station Amargarh, District Malerkotla (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

Copy of Ruqa. SHO PS Amargarh, Jai Hind, Today I SI alongwith ASI Harjeet Singh no. 496/SNG, HC Abdul Shamim no. 1539/SNG, SC Swaranjeet Singh no. 1719/SNG, C Tejveer Singh no. 1992/SNG and L/C Rimpi no. 1414/SNG was in checking out suspected person, suspected vehicles and in this regard was on Govt. Vehicle bearing PB-65-BA-8115, which was being driven by SC Nirbhay Singh 990/SNG, and in this regard was present near Drain Bridge on Mahoran Nabha Malerkotla Road alongwith laptop, inverter, printer etc., then the time was about 02:30 PM and secret informer came and informed that Soni Singh son of AmarJeet Singh and his mother Amar Kaur @ Amro w/o Amarjeet Singh R/o Baghria and Lakhwinder Singh @ Rinku son of Surinder Singh R/o Batha all



three are habitual to sold the intoxicant tablets after taking the same from outside. Today also Soni Singh and his mother Amar Kaur @ Amro and Lakhwinder Singh @ Rinku above in car no. DL-1C-AA- 9123 make Dezire Color White after taking the intoxicant tablets going towards Village Baghria on Cannal Side bay village Bathan to Maharana to sold the same their customers. If immediately in a preplanned manner barricading the done here and after checking above persons be nabbed, then from them in a huge quantity intoxicant tablets can be recovered. Information true and reliable. Then I SI informed about the information to the companion official and after barricading started checking then at about 03:00 PM one car color white upon the cannal side was seen to be coming upon main road from village Salar. I give a sign to stop the car, then the driver of the car after seeing the barricading tried to run the car then HC Abdul Shamim no. 1539/SNG by moving barricade ahead to stopped the car. In a car two persons and one lady was sitting. Both persons and lady after opening the doors of the car tried to run. Who I ASI alongwith the help of companion police officials nabbed and enquired their name and address, then driver of the car disclosed his name Soni Singh son of Late Amarjeet Singh R/o Village Baghria, P.S Amargarh, District Malerkotla, and the person who was sitting with him disclosed his name Lakhwinder Singh @ Rinku son of Surinder Singh R/o Village Batha, P.S Amargarh, District Malerkotla and the lady which was on the back seat of the car disclosed her name Amar Kaur @ Amro W/o Late Amarjeet Singh R/o Baghria, P.S Amargarh, District Malerkotla. Then I SI checked the car then from the back seat of the car one plastic polythene color white was lying and the plastic polythene was also tied out of which the strips of tablets were clearly visible. The same was taken out of the car and after untied the plastic bag checked the strips of tablets after taken the same out, and upon counting there are total 120 strips and in each strip there are total 10/10, total 1200 tablets. All strips having Marka NRX Tramadol Prolonged-release Tablets IP 100mg CELCIDALE batch no. CDA 22003 MFG. DATE NOV/2022 EXPIRY DATE OCT/2024 was recovered. Then I SI to the coming Passer byes tried to join in investigation but all by disclosing their problem and nobody joined the investigation. Then I SI prepared one parcel of intoxicant tablets after taking the same in one white color cloth packet. Then the parcel having intoxicant tablets sealed by I SI with my Seal SS. Sample of seal prepared separately. Seal after use handed over to ASI Harjeet Singh no. 496/SNG. Then car was checked and in front and in back of the car number plats DL-1C-AA-9123 are affixed. And the color is white make Dezire. Upon checking the car non document regarding ownership was found. Then I SI sealed parcel of intoxicant tablets, sample of seal and car no. above without document taken into police possession by preparing a memo. Memo was signed by witnesses. Because of this Soni Singh, Lakhwinder



Singh @ Rinku and Amar Kaur above by taken into possession intoxicant tablets and to sold the further committed the offence U/S 22, 61, 85 of NDPS ACT, Due to which I SI sent a ruqa for registration of case under section 22, 61, 85, of NDPS ACT against Soni Singh son of Late Amarjeet Singh R/o Baghria, P.S Amargarh, District malerkotla, Lakhwinder Singh @ Rinku son of Surinder R/o village Bathan P.S Amargarh, District Malerkotla, and Amar Kaur @ Amro W/o Late Amarjeet Singh R/o Baghria P.S Amargarh, District Malerkotla after taking printout by typing in laptop through C Tejveer Singh no. 1992/SNG at PS Amargarh. After registration of case the case filed be informed. Special report be issued. Control room Malerkotla be informed. I am busy at the spot in investigation. Attested by SD/- SI Surjeet Singh 968/PTL P.S Amargarh Dated 15.07.2023, Today in the jurisdiction of Mahoran Cannal Time about 05:00 PM, after receiving ruga FIR no. Above as per offences above against Soni Singh son of late Amarjeet Singh R/o Baghria, P.S Amargarh, District Malerkotla, Lakhwinder Singh Rinku son of Surinder Singh R/o P.S Amargarh, District Malerkotla, and Amar kaur Amro, W/o Late Amarjet Singh R/o Baghria, P.S Amargarh, District Malerkotla entered in registered record completed. In charge control in going to be informed. Copy of FIR as a special report through PHG Sukhwinder Singh 4800 sent before Ilaqa magistrate and officials. Coming C Tejveer Singh 1992/SNG alongwith original Rug and original case file sent before SI Surjeet Singh 968/PPL for investigation.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that neither the car belongs to the petitioner from which the alleged recovery of 1200 tablets of tramadol has been affected nor he was driving the vehicle. In fact, the petitioner was shown to be sit on the back seat of the car. It is further submitted on behalf of the petitioner that despite the availability of independent witness, no one has been joined by the prosecution. There is also delay of six days in sending the samples to the FSL.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition, stating that 1200 tablets of tramadol were recovered from the conscious possession



of the present petitioner. The petitioner being a habitual offender does not deserve the concession of regular bail.

4. **Analysis**

Be that as it may, considering the fact that the petitioner has already suffered incarceration of 1 year, 5 months and 20 days added with the fact that investigation is complete, challan stands presented on 19.12.2023, charges stand framed on 04.04.2024 and out of total 17 prosecution witnesses only 1 has been examined so far, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.*** 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 the concession of bail.

5. **DECISION:**

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

(SANDEEP MOUDGIL)
JUDGE

09.01.2025
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>