

2025:PHHC:073633



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

**CRM-M-28606-2025
DECIDED ON: 28.05.2025**

VICKY**.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Arnav Sood , Advocate
for the petitioner.

Mr. Rajiv Verma, Senior DAG Punjab

SANDEEP MOUDGIL, J (ORAL)**1. Prayer**

The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking regular bail to the petitioner in case FIR No.0009 dated 07.02.2025, under Sections 22, 29 of NDPS Act, 1985 registered at Police Station Mahilpur, District Hoshiarpur.

2. Facts

Facts as narrated in the FIR reads as under:-

“SHO P.S. Mahilpur, District Hoshirpur "Jai Hind" Today I ASI with ASI Balvir Singh 1890/Hsp, ASI Surjit Singh 1755/Hsp, PHG Ranjit Singh 26974, PHG Surjit Singh 26988 carrying a laptop, printer and investigation kit on a private vehicle were present near Bisat Doaba canal road near village road Binjo and had laid down a naka at T

point for patrolling and checking of bad elements and all vehicles. We checked 09-10 vehicles. During checking we persons were saw on coming registration no. two clean shaved motorcycle bearing PB-07-AK-2177 brand Bajaj Pulser 180CC colour black from village Binjo side. I ASI gave direction to them to stop; they tried to run backwards after leaving the bike. First person threw a heavy polythene black bag from his right pocket of the jean on the road and second person threw a heavy polythene white bag from his right pocket of the jean towards road. I ASI apprehended them with the help of fellow employees and asked their names and address. Motorcycle rider disclosed his name as Davinder Singh @ Rocky son of Dalvir Singh resident of Binjo, Police Station Mahilpur, District Hoshiarpur and pillion rider disclosed his name Vicky son of Narinder Singh resident of Behbalpur, Police Station Mahilpur, District Hoshiarpur. I ASI introduced myself to them that I ASI Sukhwinder Singh 850/Hsp posted as incharge at Police Post Kotfatuhi, Police Station Mahilpur, District Hoshiarpur. I have suspicion that you both are carrying some illegal substance and due to this search of both of you and search of polythene bags thrown by you have to be conducted. You have a legal right that you can get your search conducted in the presence of gazetted officer or magistrate and it is my duty to arrange the same. I ASI gave notice under section 50 of NDPS Act to both of them. Davinder Singh @ Rocky and Vicky signed the same separately and witnesses also signed the same. Davinder Singh @ Rocky said that he has faith in me and I can conduct his search and search of his black polythene bag thrown by him. Consent memo was prepared and same was signed by Davinder Singh @ Rocky and witnesses given their testimony. Similarly Vicky said that he has faith in me and I can conduct his search and search of his white polythene bag thrown by him. Consent memo was prepared and same was signed by Vicky and witnesses given their testimony. Before conducting the search police party tried to join witness from public but no one come forward and everyone showed their inability. No one joined the police party. Then I ASI in the presence of fellow employees and Davinder Singh @ Rocky

conducted the search of black polythene bag thrown by him. On opening and checking of the said polythene bag intoxicant substance was recovered which was thrown by Davinder Singh Rocky. On which I ASI asked Davinder Singh @ Rocky and he replied that it is Intoxicant Substance. After weighing the Intoxicant substance with the computer scale the weight came to be 105 grams. Same was packed with that black polythene bag and one parcel was prepared and then I ASI conducted the search of Vicky and search of white polythene bag thrown by him in the presence sence of Vicky and fellow employees. On opening and checking of the said polythene bag intoxicant substance was recovered which was thrown by Vicky. On which I ASI asked Vicky and he replied that it is Intoxicant Substance. After weighing the Intoxicant substance with the computer scale the weight came to be 35 grams. Same was packed with that white polythene bag and one parcel was prepared. I ASI sealed that parcel with my seal SS and both the parcels weighing 108 grams and 35 grams taken into police custody after preparing recovery memo. Sample stamp SS was prepared differently and after using the stamp was handed over to the ASI Surjit Singh 1755/Hsp and motorcycle bearing registration no.PB-07-AK-2177 marka Bajaj Pulser having any 180 CC documents color black taken into custody after preparing the recovery without police memo. Recovery memo signed by witnesses. Davinder Singh @ Rocky son of Davbir Singh resident of Binjo, police station Mahilpur, District Hoshiarpur carrying substance and Vicky resident Mahilpur, of 105 grams intoxicant son Behbalpur, of Narinder Singh police station District Hoshiarpur carrying 35 grams intoxicant substance both of them have committed offence under section 22-61-85 NDPS Act. Ruqa be sent by hand after writing for registration of the case through PHG Ranjit Singh 26948 in police station. Section 57 NDPS Act has complied with. After registering the case number be informed. Special reports be sent. Control room and officer Bala be informed by telephone. I ASI is present along with fellow employees on spot. Sd/- Sukhwinder Singh

*ASI Incharge, Kot Fatuhi, Police Station Mahilpur. Date:
07.02.2025”*

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 the quantity of intoxicant powder recovered from the petitioner is 35 grams, which is non-commercial in nature. He submits that the co-accused namely Davinder Singh @ Rocky from whom 105 grams of intoxicant powder was effected, has already been enlarged on interim regular bail by the trial Court vide order dated 20.03.2025 (Annexure P-2).

On behalf of the State

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 3 months and 17 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is on production warrants in another case of similar nature, therefore being an habitual offender does not deserve the concession of regular bail.

4. Analysis

Considering the fact the recovery of contraband i.e., 35 grams of intoxicant powder is non-commercial in nature and co-accused has already been enlarged on interim regular bail by the trial Court in the absence of FSL report added with the fact that investigation is complete, challan stands presented on 07.04.2025, charges have been framed on 07.04.2025 and out of total 12 prosecution witnesses, none has been examined. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served

by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of 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 “**Balwinder Singh versus State of Punjab and Another**”, **SLP (Crl.) No.8523/2024**. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.”*

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the concession of bail.

5. **Relief:**

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

28.05.2025

Meenu

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