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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27891-2025 (O&M)
DECIDED ON: 26.05.2025

MOHAMMAD ISMAIL ALIAS GUDDU

....PETITIONER

VERSUS

STATE OF HARYANA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishvjeet, Advocate for
Mr. Ashish Grewal, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

CRM-21235-2025

Application is allowed, as prayed for.

CRM-M-27891-2025

1. Prayer

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 for grant of regular bail to the petitioner in FIR No. 900 dated 15.09.2024, under Sections 22 C & 29 of NDPS Act 1985, registered at Police Station: Yamuna Nagar City, District: Yamuna Nagar.

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

'Copy of Written is as follows: To, officer Incharge, City Police Station, Yamuna Nagar, Jai Hind. Today I, SI Satish Kumar No. 139/A in uniform along with SI Satish Kumar No. 601/YNR, SI Ashok Kumar No. 128/A, Constable Rinku No. 1230/YNR, in passenger vehicle government

number HR70GV-7249 whose driver is EHC Ravindra Kumar No. 349/YNR in civil passport, along with laptop, printer and I/O kit, at 05.00 PM, while patrolling and investigating crime from ANC Yamuna Nagar to Sabzi Mandi Yamuna Nagar, Industrial Area, Bus Stand Chowk Yamuna Nagar, Kamani Chowk Yamuna Nagar in connection with Vidhan Sabha Elections-2024, at 06.00 PM, I am present at the turn of the street near Lajpat Nagar main gate on the main road from Kamani Chowk Yamuna Nagar to Vishwakarma Chowk Yamuna Nagar, when a boy was seen coming on foot from 2 the street carrying a black colored foil in his left hand. The SI stopped him on the ground of suspicion and asked his name and address. He told his name as Jasbir Singh alias Jassi son of Joginder Singh resident of house no. 447 Hari Nagar Yamuna Nagar police station city Yamuna Nagar district Yamuna Nagar and the SI asked Jasbir Singh alias Jassi what is in the black sheet held in his hand on which Jasbir Singh alias Jassi kept quiet and got scared and started looking left and right and then the SI requested Sadiq Ali son of Tahir Hasan resident of house no. 460 Chandpur, Y Nagar and Mohd. Tasleem son of Abid Hasan resident of house no. 116 Vishal Colony, Y Nagar standing at the spot to become public witnesses and the SI gave his mobile phone to SI Ashok Kumar no. 128/A and asked him to video graph the spot through the phone and then the SI checked the black sheet held in the left hand of Jasbir Singh alias Jassi above. On checking the sheet, it was found that there was some black sheet inside the veranda sheet. A total of 20 strips of banned narcotic capsules, each strip having capsules, 3 strips in a strip, each strip having 8 capsules, making a total of 480 banned narcotic capsules were recovered. On all the capsules' strips, Dicyclomine Hydrochloride, Tramadol Hydrochloride Acetaminophen Capsules brand Spasmaxx-B Capsules, B.NO VLAD10, MED. 08/2023, EXPIRY DATE.07/2025 FOR 8 CAPS. MRP RS 52.00, Manufactured by: Maxx Farmacla (India) LLP. Registered office Phase 1 Hall No: 2 Plot No 508 Block C Sector 38 Rai Industrial Estate Sonipat Haryana -131029 is written, which is a total of 480 narcotic capsules. The accused Jasbir Singh alias Jassi was asked to produce permit OI license for keeping the Barada capsules, but he could not produce any license or permit for keeping the capsules in his

possession. About which the higher officials were informed separately. The SI contacted Mrs. Ritu Mehla, Drug Control Officer, Yamunanagar on her mobile phone number 9258200008 and after explaining the situation, sent a written application and a photo of one strip of Barada capsules to the Drug Control Officer, Yamunanagar on her WhatsApp number 9258200008 at 06.35 PM. The SI took out 8 capsules from one strip of Barada narcotic capsules and weighed the capsules by taking out an electronic scale from the IO kit. On weighing, the weight of the 8 capsules was found to be 4.37 grams. The total weight of the 480 capsules recovered was 262.2 grams. While weighing the narcotic capsules with an electronic scale, the SI took photos with his mobile and recorded the time as 06.45 PM, the Drug Control Officer, Yamuna Nagar sent his written report on WhatsApp regarding the above mentioned capsules, which is as follows, DCO/YNR-1/2024/SPL-1, TO SH SATISH KUMAR SI 139/A ANTI NARCOTIC CELL YAMUNANAGAR, SUBJECT OPINION REGARDING APPLICTION MOVED BY SI SATISH KUMAR NO.139/A ANC YNR DT 15.09.24, IN REFERCE TO ABOVE MENTIONED SUBJECT, TRAMADOL FALLS UNDER THE CATEGORY OF NDPS ACT. The SI put the banned narcotic capsules in the same black colored foil and prepared a cloth sheet and the SI stamped the material sheet with three seals of SK, the sample was sealed. It was prepared separately. After affixing the seal, the man handed over the Palanda to SI Ashok Kumar No. 128/A. The banned narcotic capsules were seized by the police as evidence through a report. The accused and the witness signed the report of recovery. The entire action was videographed by SI Ashok Kumar No. 128/A on my mobile phone. Accused Jasbir Singh alias Jassi son of Joginder Singh resident of house no. 447 Hari Nagar Yamuna Nagar, Police Station City Yamuna Nagar, District Yamuna Nagar has committed the offence under Section 22 C of the NDPS Act by keeping 480 banned narcotic capsules brand Spasmaxx-B Capsules, B.N. VLAD10 in his possession without licence or permit. Therefore, after writing the written complaint, for the registered case EHC Ravindra Kumar no. 349/YNR, the police station is Aarsal, after informing the registered case number, special report of the case should be sent to the concerned officer. For further investigation,

as per the orders of officer, ANC incharge Yamuna Nagar was informed through Bajaria mobile phone to send second investigation officer to the spot, I SI am busy in investigation at the spot. Today: Lajpat Nagar Gate Yamuna Nagar. SD: SATISH KUAMR SI ANC Yamunanagar Date 15.09.2024.'

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 on the basis of disclosure statement of co-accused Suhail Singh, who has been granted the concession of regular bail vide order dated 14.05.2025 (Annexure P-3) passed by this Court in CRM-M-25178-2025. He submits that recovery of contraband was not effected from his conscious possession and whatsoever recovery i.e. 262.2 grams of Dicylomine Hydrochloride Tramadol Hydrochloride and Acetaminophen marks Spasmaxx B was effected from co-accused Jasbir Singh @ Jassi and the same is marginally over and above the commercial quantity.

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 8 months and 5 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that recovery of contraband in the present case is commercial in nature. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case.

4. Analysis

Be that as it may, considering the facts that recovery of contraband i.e., 262.2 grams of Dicylomine Hydrochloride Tramadol Hydrochloride and

Acetaminophen marks Spasmaxx B was not effected from the petitioner; except disclosure no incriminating material has been put forth by the prosecution; co-accused Suhail has already been granted the concession of regular vide order dated 14.05.2025 (Annexure P-3) in addition to the fact that petitioner has already suffered incarceration of 8 months and 5 days, and is is a person of clean antecedents and the investigation is complete, challan stands presented on 29.11.2024 charges stands framed on 19.04.2025 out of 19 prosecution witnesses, only 1 PW 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.

Taking into consideration the following orders passed by the Coordinate Benches of this Court wherein the recovery from the accused was marginally over and above the commercial quantity for the respective contraband in each case, the Courts have taken a lenient view while granting bail to the accused therein i.e. Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)' decided on 11.11.2022, 'Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)' decided on 19.01.2022, 'Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021, Gurpreet Gopi Versus State of Punjab, CRM-M-41039-2019, Singh decided on 26.02.2020, Dalbara Singh Versus State of Punjab, CRM-M-47880-

2022 decided on 16.01.2023', and Vivek Watts versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023.

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 “*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.”*

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

26.05.2025

Meenu

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