



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218

CRM-M-1453-2025

DATE OF DECISION: 29.04.2025

SAWINDER SINGH ALIAS SARKARIA

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ankur Jain, Advocate for the petitioner(s).

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 483 Cr.P.C. seeking grant of bail in case FIR No.225, dated 27.11.2022, registered at Police Station Sadar Tarn Taran, under Sections 21 (c), 22 (c) of NDPS Act 1985 (P-1).

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

‘Brief fact of the case is that on ASI including ASI Kanwaljit Singh belt No: 225IT.T, ASI Ved Prakash belt No. Belt No. 449 T.T, PHG Malkit Singh 20192 with Govt. Car Balero Capper registration No. PB-65-BA-7393 whose Driver Sr. Const. Mantej Singh Belt No.501T.T is patrolling and looking for bad elements from Taran-Taran to village Kaler, Bagaria-Pakhoke etc. When the police party reached near the T-point of Village Bagaria from the National Highway, a person from the front side walked to Village



Bagaria. On seeing the police party and the official vehicle, he took out a large polythene bag from the left pocket of his pant and dropped it in his left side in the grass on the side of the road and suddenly turned back and walked fast. All this is visible in the light of clear street lights. The ASI told the driver of the vehicle to stop the vehicle and with the help of fellow employees, without any suspicion, I controlled the person and I told my name, rank. And while informing about the posting, also showed the uniform and the name plate attached and asked his name, then he told his name Savinder Singh alias Sarkariya son of Subeg Singh, resident of village Bagaria police station Sadar Tarn Taran, to whom he asked that what is there in the polythene bag which your have thrown after taking out from the trouser of your left pocket after seeing the police party. Then he replied that envelope contains household goods before checking the envelope he tried to join a private witness, but nobody was willing to join the process. Then again I, in the presence of police officials asked Savinder Singh alias Sarkaria, that what is in the polythene envelope which was thrown out from your left pocket of the trouser to which he after moving in front of the police party picked up that envelope and then opened it and told me it contains heroin to which I checked it in his hands and found it to be heroin to whom I ASI weighted on electronic scale which was 265 grams of heroin. After putting 265 grams of Sheroin in the same polythene envelope and putting in a plastic box and parcel it with a cloth and put my seal as 'GS'. All sealed with seal GS, sample seal prepared separately and after stamp handed over to ASI Ved Prakash No: 449/IT and parcel cloth in which plastic box contained 265 grams of heroin with seal GS and sample seal was taken in possession which was a chance recovery that is why the conditions of NDPS Act were not fulfilled at the spot, so the accused Sawinder Singh @ Sarkaria, son of Subheg Singh, residence of Village Bagaria, Police Station Sadar, Tarn Taran, who by keeping 265 grams of heroin has committed an offence under Section 21 (C), 61, 85 of NDPS Act, so a ruqa is sent through PHG Malkiat Singh, 20192 to Police Station. After registration of case, number be informed and information be sent



to control room as I am busy in investigation. Sd-Gurdeep Singh, ASI/ I/C, PP, Manochahal, PS Sadar, Tarn Taran, dated 27 11.2022 at 06:30 PM.'

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. As per the allegations, 265 grams of Heroin was recovered from a polythene bag thrown by the petitioner on seeing the police party while as per the FSL Report (Annexure P-3) the alleged contraband is Tramadol Hydrochloride which falsify the case of the prosecution and proves that the alleged recovery is planted one. Moreover, the investigation in this case is complete as challan stands presented on 12.05.2023, charges stands framed on 12.05.2023 out of 21 prosecution witnesses, only 5 PWs have been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

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.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner was found in possession of 265 grams Heroin i.e. commercial in nature, moreover, the petitioner is a habitual offender as he is involved in other FIRs also, hence, prays for dismissal of the petition.



4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 2 year, 2 months and 29 days; as per the prosecution story the alleged contraband is 265 grams of Heroin whereas as per the FSL report, the alleged contraband is Tramadol Hydrochloride, hence this fact is to be decided by the Trial Court while leading evidence, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 12.05.2023, charges stands framed on 12.05.2023 out of 21 prosecution witnesses, only 5 PWs have been examined so far which is sufficient 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.

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 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. **Relief**

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

29.04.2025

anuradha

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*