



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22671-2025
DECIDED ON: 05.05.2025

SONA @ SONU DANT TUTTE WALA @ SONU @ SONU TUTE
DANDAN WALA

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Arora, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the third time under section 483 BNSS for grant of Regular Bail to the petitioner during the pendency of trial of case FIR No. 154 dated 05.09.2023 U/s 21/26/61/85 of NDPS Act, 1985 registered at Police Station Majitha, District Amritsar Rural, Punjab i.e. ANNEXURE P-1.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

Chief Munshi P.S. Majitha, Today, I INSP/SHO with SI Hira Singh No. 1349, ASI Harjinder Singh No. 1689, HC Jagroop Singh No. 774, Chief Constable Gursevak Singh No. 1621, Constable Palwinder Singh No. 1759, Constable Manjinder Singh No. 1473 on Government Vehicle Bolero Kemper

bearing Registration No. PB65-BA-8136 with driver ASI Ranjit Singh 484 along with laptop printer kit and investigation kit as per order of Hon'ble SSP Amritsar Rural, had set up check-point a little ahead of railway gate towards Nag Kalan side. A young man from the village Nag Khurd was coming towards the railway gate Nag Kalan on foot. He suddenly panicked on seeing the police party and turned back. INSP/SHO with the help of fellow employees got control of him on the basis of suspicion, and asked for his name, and asked the reason for turning back after seeing the police party, to which he could not give a clear answer. On which the INSP/SHO suspected, but gave the said person a notice under Section 50 of the NDPC Act that I am Inspector Balwinder Singh, SHO, Majitha Police Station. I am wearing a uniform and a name plate is attached. I suspect that you have some drug in your possession. You are to be searched, you have the legal right that you can get your search done by a magistrate or a gazetted officer, which I can arrange if possible. Then the said person said that I want to get my search done by a gazetted officer. On which the INSP/SHO informed the gazetted officer DSP Majitha Mr. Kanwarpreet Singh on phone about the situation and requested him to come. After some time Mr. Kanwarpreet Singh PPS DSP Sub Division Majitha along with the staff came to the place. DSP Sahib stopped the said person and asked him for his name, who said that he was Jugnu alias Aman, son of Lakhwinder Singh, a resident of Nag kalan police station Majitha. DSP Sahib issued a notice under section 50 of the NDPS Act to Jugnu alias Aman and told that "I am Kanwarpreet Singh PPS DSP Sub Division Majitha posted in my uniform is worn. Name plate is attached. We suspect that you are carrying drugs. So you have to be searched. You have legal right. You can get your search done by a Magistrate or any other gazette officer." Jugnu alias Aman agreed to be searched in the presence of DSP Sahib. Before searching Jugnu alias Aman, he tried to join the public witness party, but no one was ready to join the police party. Then I

Inspector/ SHO in presence of DSP sir and fellow officials, searched Jugnu alias Aman, From the right pocket of his shorts, a transparent wax envelope was found in which a heroin like substance was visible, on which DSP sahib asked said Jugnu alias Aman about the object in the was envelope which the said Jugnu @ Aman scaredly told that it contained heroin. To weigh the wax envelope along with heroin, the Inspector/ SHO took out the electronic probe from the investigation kit. It was 260 grms including the envelope. On which I, Inspector/ SHO put the waxed envelope with heroin weighed in a plastic box and prepared the parcel and sealed it with his seal B.S and DSP Sahib sealed it with his seal KPS sample stamp prepared separately. I, Inspector/ SHO handed over the seal to SI Hira Singh NO. 1349 after stamp and DSP Sahib kept his stamp with him.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was nominated in the instant FIR only on the basis of disclosure statement of co-accused namely Jugnu @ Aman and Maninder Singh, who along with other co-accused persons namely Saajan Singh Pradhan and Harpreet Singh @ Kalu have already been granted the concession of regular bail by this Court vide orders dated 22.04.2024 (Annexure P-3), 21.12.2023 (Annexure P-5), 04.12.2023 (Annexure P-4), 11.03.2024 (Annexure P-6) respectively. He further contends that nothing has been recovered from the present petitioner and whatever recovery i.e. 260 grams of heroin was effected that was from co-accused Jugnu @ Aman. He further asserts that the recovered contraband is marginally over and above the commercial quantity. It has been contended on behalf of the petitioner that the petitioner is not a habitual offender as he is not involved in any other case.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is the kingpin in the instant FIR and the quantity of alleged contraband i.e. 260 grams of heroin is commercial in nature.

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e. 08 months and 12 days added with the facts that the quantity of alleged contraband is marginally over and above the commercial quantity; nothing has been recovered from the possession of the petitioner as whatever recovery was effected that was from co-accused Jugnu @ Aman; co-accused namely Jugnu @ Aman and Maninder Singh, who along with other co-accused persons namely Saajan Singh Pradhan and Harpreet Singh @ Kalu have already been granted the concession of regular bail by this Court vide orders dated 22.04.2024 (Annexure P-3), 21.12.2023 (Annexure P-5), 04.12.2023 (Annexure P-4), 11.03.2024 (Annexure P-6) respectively; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate produced today before this Court by learned State counsel; investigation is complete, wherein after framing of charges on 11.03.2024 out of total 20 prosecution witnesses, none has been examined so far, which is suffice for this Court to infer that the conclusion of trial shall take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve 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 him 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

05.05.2025

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No