

2025:PHHC:043549



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

**CRM-M-16495-2025
DECIDED ON: 01.04.2025**

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

Present: Mr. Kulbhusan Raheja, Advocate for the petitioner.
Mr. Gautam Thapar, AAG Punjab

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

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for grant of regular bail to the petitioner in case FIR No. 23, dated 20.03.2024, under Sections 15, 18 of NDPS Act, 1985 registered at Police Station Maloud, Ludhiana, District Khanna (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

“To, the Station House Officer, Police Station, Maloud, Jai Hind. Today on 20.3.2024, myself SI alongwith ASI Raj Mohammad 848/Khanna, ASI Taranjit Singh 501/Khanna, Havildar Amarjit Singh 726/Khanna, Constable Rajvir Singh 499/Khanna by taking Laptop-Printer with them and by travelling in Government Vehicle No. PB-65-BF-6903 Make Scorpio driven by Havildar Harvir Singh 297/Khanna were present near Siphon (Beed) in the area of Village Sihora in connection with the checking and searching of the suspicious persons and bad elements and were conducting the checking of the vehicles

coming from Canal Bridge Bhandewal. At about 5.30 A.M one Truck came from the side of Canal Bridge, Bhandewal Make Bharat Vannes 12 Chaki bearing No. PB-10ES-5158 which was stopped at the Check Post by myself ASI with the help of my companion employees on the basis of suspicion by giving torch signal and the name of the driver was enquired by alighting him down from the truck who told his name as Nirbhay Singh son of Ajaib Singh, resident of Village Madnipur, Police Station Malaud, Tehsil Payal, District Ludhiana and the Conductor sitting on one side told his name as Balrup Singh son of Sukhdev Singh, resident of Village Madnipur, Police Station Malaud, Tehsil Payal, District Ludhiana. Thereafter, myself SI got served a notice under Section 50 NDPS Act upon them informing the above mentioned Nirbhay Singh and Balrup Singh about their legal rights to the effect that "Myself Jaswinder Singh 199.J has been posted at R.C.I.A Staff Khanna. I am in full uniform bearing the name plate of my name. I am having suspicion that there is some illegal article or narcotic drugs with you and in your Truck No. PB- 10ES-5158. Therefore it is necessary to conduct your search as well as the search of your Truck. But you are having legal right that if you want to get your search as well as the search of your Truck No. PB-10ES-5158 conducted in the presence of any Magistrate or any Gazetted Officer, then he can be called at the spot or you and your truck can be taken and produced before him. Upon which Nirbhay Singh and Balrup Singh after thinking some time said that "We want to get our search as well as the search of Truck No. PB-10ES-5158 in our possession conducted from some Gazetted Officer Thereafter myself SI separately recorded the dissented Memos of Nirbhay Singh and Balrup Singh which were signed by Nirbhay Singh and Balrup Singh. ASI Raj Mohammad 848/Khanna and ASI Taranjit Singh 501/Khanna appended their signatures as witnesses. Thereafter myself SI made a phone call from my Mobile No. 978001129 at about 6.45 AM to Shri Nikhal Garg PPS/DSP, Payal on his Mobile No. 98053-45728 and he was informed about the position and requested him to come present at the spot. After some time Shri Nikhal Garg, PPS/DSP Payal alongwith his staff came present at the spot by travelling on Bolero vehicle bearing No. PB10FV0468 who by introducing himself to Nirbhay Singh and Balrup Singh told them that myself is Nikhal Garg, PPS and

is posted as DSP at District Police, Sub Division, Payal and I am a Gazetted Officer of Police Department. I am in uniform which is bearing the name plate of my name. I have been informed by SI Jaswinder Singh 199/J RCA Staff Khanna that there is some illegal article or narcotic drugs with you and in your Truck No. PB-10ES-5158 in your possession Therefore it is necessary to conduct your search as well as the search of Truck No. PB- 10ES-5158 in your possession. According to Section 50 of the NDPS Act, you are having a right that you can get your search as well as the search of your above Truck conducted in the presence of a Magistrate or any other Gazetted Officer and in that eventuality he can be called at the spot or you and the truck in your possession can be taken and produced before him. Upon which Nirbhay Singh and Balrup Singh after thinking some time said that we are having faith in you and you can conduct our search and the search of the truck in our possession. Whereupon consent Memos on behalf of Shri Nikhal Garg PPS, DSP Payal were separately written and Nirbhay Singh and Balrup Singh put their respective signatures below their respective statements in Punjabi. ASI Raj Mohammad 848/Khanna and ASI Taranjit Singh 501/Khanna appended their signatures as witnesses. Thereafter myself SI tried his level best to associate 2-3 persons passing thereby in the Police Party for the purpose of investigation but no person joined the Police Party on the pretext of their own compulsions. Thereafter myself SI on the directions of Shri Nikhil Garg, PPS, DSP Payal, conducted the search of Truck No. PB-10ES-5158 according to the Rules and Regulations and checked the Cabin of the Truck from which 02 heavy plastic bags were found and their openings were found to be tied. One black color envelop wrapped in transparent plastic paper was found, the opening of which was tied. Thereafter myself SI with the help of companion employees brought down 02 bags and black color envelop wrapped in transparent plastic paper from the Truck and after opening the same, they were checked. Out of 02 bags 'bhuki chura post' was recovered and they were marked as No. 01 and 02. The weight of the recovered 'bhuki chura post' was done with electronic weighing machine which was already available in the investigation bag of myself SI and the weight of bag of 'bhuki chura post' marked as No. 01 came to 30 Kilogram, weight of bag of 'bhuki chura post' marked as No. 02 came

to 25 Kilogram. The black color envelope wrapped in plastic paper was checked from which Opium was recovered. On weighing the Opium it came to 500 gram alongwith the weight of the envelop. Thereafter myself SI tied the openings of both the plastic bags of 'bhuki chura post' as it is and prepared their parcels. Thereafter myself SI super stamped 02 parcels of plastic bags of 'bhuki chura post' with stamp bearing words JS. The sample of seal was prepared separately and after using the seal, it was handed over to ASI Raj Mohammad 848/Khanna. Thereafter the DSP super stamped 02 parcels of bags of 'bhuki chura post' and one parcel of plastic box containing 500 gram opium with his seal bearing words NG and on the sample seal he also put his stamp bearing words NG and two parcels of 'bhuki chura post' and one parcel of Opium above mentioned were attested by him and the DSP after using his stamp bearing words NG kept the same with him, The original R.C of Truck No. PB 10ES-5158 was found from the Dais Board of the Truck. Thereafter myself SI took into police possession 02 parcels of 'bhuki Chura post' super stamped with seal JS+NG and one parcel of plastic box carrying opium super stamped with JS+NG, truck No. PB-10ES-5158 alongwith loaded Tiles and original R.C as proof by preparing memo of recovery but Nirbhay Singh and Balrup Singh put their respective signatures and ASI Raj Mohammad 848/Khanna and ASI Taranjit Singh 501 Khanna put their respective signatures as witnesses and the DSP attested the Memo of Recovery. In this way Nirbhay Singh and Balrup Singh above mentioned by keeping in his possession 55 Kilogram 'bhuki Chura Post' and 500 gram Opium have committed offence under Section 15/18/61/85 of N.D.P.S. Act. Thus by reducing the Ruqa in writing, the same is sent by hand through Constable Rajvir Singh 499/Khanna to the Police Station Malaud for registration of a case against the above mentioned accused Nirbhay Singh and Balrup Singh under the above mentioned Sections. After registration of the case, FIR umber may be informed. Special reports be issued. DCR, Khanna and officers concerned be informed. Myself SI alongwith companion employees is present at the spot for investigation. Sd/- Jaswinder Singh SI C.I.A Staff Khanna. Dated 22.03.2024 in the area of Siphon (Beed) Village Sihora at 9.00 AM. Today on receipt i of the above Rug in the Police Station, the present case under the above mentioned Sections against

the aforesaid accused Nirbhay Singh and Balrup Singh is registered. The ruga in original alongwith copy of FIR is sent through the same person to the Investigating officer for investigation at the spot. After preparing special reports, the same are sent by hand through PHG Charanjit Singh 29178 to the Illaga Magistrate and Officers concerned. DCR Khanna and officers concerned have been informed.”

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 recovery of contraband was not effected from his conscious possession. He further argued that the petitioner is not involved in any other case, meaning thereby his antecedents are clean. Moreover, he contend that the alleged recovery of contraband is marginally over and above the commercial quantity.

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 prays for dismissal of the present petition stating that the recovery of contraband i.e., 55 kg poppy husk and 500 grams is commercial in nature, therefore, the petitioner does not deserve the concession of bail.

4. **Analysis**

Be that as it may, considering the fact that the petitioner has already suffered incarceration of 1 year 5 days; his antecedents are clean; recovery of contraband effected is marginally over and above the commercial quantity added with the fact that after framing of charges on 20.09.2024, out of total 20 prosecution witnesses only 2 have been examined so far, which is

sufficient for this Court to infer that the conclusion of trial shall take considerable time, no useful purpose would be served by detaining the petitioner behind the bars for an indefinite period.

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 “***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 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

01.04.2025

Meenu

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