



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17070-2025
DECIDED ON: 03.04.2025

SAHIL KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Sekhon, Advocate and
Mr. Randeep Singh Gill, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 for grant of regular bail to the petitioner in case FIR No. 401 dated 29.08.2024 under Sections 22, 25 and 29 of NDPS act 1985, registered at Police Station City Barnala, District Barnala.

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

"12. First Information contents (Attach separate sheet, if necessary) Copy of Rukka, "SHO P.S. City Barnala, Today 1 ASI including HC Ajay Singh 103 Br Ct. Harmandeep Singh 425/Br PHG Nadhir Singh 47628, PHG Jagtar Singh 27072 were driving on Government Vehicle No. PB-19F-1217 whose

driver is HC Rajeev Kumar 91/br including laptop printer and investigation Kit were present near Prem Pradhan Market, Barnala for patrolling and checking suspicious men and vehicles. It would be around 10:15 AM that special informant and informed in isolation that Sanjeev Kumar alias Bittu resident of Near Bus Stand Rampura who runs PB-31 Cafe at Near Bus Stand Barnala, Ahmed Khan alias Sona son Yusuf Khan, son of Raju residents of near the bus stand, who owns a motorcycle are in the business of selling narcotic pills If they are searched at the grain market in Barnala, they can be caught red-handed along with a large quantity of narcotic pills, the report is firm and reliable. Thus, Sanjeev Kumar alias Bittu resident, near bus stand Rampura, owner of PB-31 Cafe, near bus stand Barnala, Ahmed Khan alias Sona, son of Yusuf Khan and Sahil Kumar son of Raju residents of near bus stand Rampura by selling narcotic pills in their possession. Which fulfills the provisions of 61/85 of NDPS Act. So the ruka is being send against Sanjeev Kumar alias Bittu resident of Near Bus Stand Rampura Owner PB-31 Cafe Near Bus Stand Barnala, Ahmed Khan alias Sona Son of Yusuf Khan and Sahil Kumar Son of Raju residents Near Bus Stand Rampura to type the said print out and file a case by hand through PHG Jagtar Singh 27072 to Police Station. By filing a case, the number should be made aware of the case. Control Room Barnala should be notified of through Wireless. A report regarding Section 42(2) ND&PS Act is being prepared and sent separately. I goes to the grain mandi Barnala to search for the accused along with the ASI. Today near Prem Pradhan Market, Barnala AT. 10:50 AM SD/- Malkit Singh ASI.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was an employee of co-accused Sanjeev Kumar @ Bittu (main accused),

who is running a cafe in the name and style of 'PB-31 Cafe' and has already been granted the concession of anticipatory bail by this Court vide order dated 25.03.2025 passed in CRM-M-50837-2024. He further contends that co-accused namely Lovepreet Singh @ Lavi, who was also an employee of said Sanjeev Kumar, has also been granted the concession of regular bail by this Court vide order dated 20.12.2024 (Annexure P-3) passed in CRM-M-63199-2024, with whom the petitioner is at parity. It has been contended on behalf of the petitioner that he is a man of clean antecedents 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 quantity of recovered contraband i.e. 2700 strips of Tramadol Hydrochloride Tablets, total 27000 intoxicant tablets, falls within the category of commercial quantity.

4. **Analysis**

Be that as it may, considering the custody period i.e. 07 months and 01 day for which the petitioner has suffered incarceration; co-accused namely Sanjeev Kumar @ Bittu and Lovepreet Singh @ Lavi have already been granted the concession of anticipatory bail or regular bail by this Court vide orders dated 25.03.2025 (Annexure P-2) passed in CRM-M-50837-2024 and 20.12.2024 (Annexure P-3) passed in CRM-M-63199-2024, respectively and the petitioner is at parity with co-accused Lovepreet Singh @ Lavi added with the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate.

Also, considering the fact that investigation is complete, challan stands presented to Court on 24.02.2025, charges are yet to be framed and total 18 prosecution witnesses have been cited, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained 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.

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

03.04.2025

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No