

2025:PHHC:046220



220

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

CRM-M-17494-2025

DECIDED ON: 04.04.2025

KULJINDER SINGH ALIAS KAKA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. M.S. Bhatti, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail in FIR No. 112 dated 18.06.2023 under Section 15,25/61,85 of NDPS Act, 1985 (Section 29 of NDPS Act added later on) registered at Police Station City-II, Khanna, District Khanna (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

“To the Office Incharge, p Police Station City -2 Khanna, Jai Hind, today myself Inspector/SHO along with ASI Madan Singh No. 544/Khanna, ASI Charanjt Singh NO. 623/Khanna, ASI Harbakhsh Singh No. 740/Khanna, ASI Gurjant Singh NO. 11/Khanna, HC Jagjit Singh No. 441/Khanna on government car

bearing registration No. PB65-BC-2446 being driven by ASI Ashok Kumar No. 115/Khanna were present at Lalheri Chowk Khannain connection with patrolling and each of bad elements The street lights were switched On in the chowk, at about 02.05 AM, a truck make Ashoka Leyland bearing registration No. PB23-K-9942 seen coming on service road from Mandi Gobindgarh side, then myself Inspector/Station House Officer has given signal to stop the truck and got parked the said truck towards one side and after alighting the driver of truck from the truck, asked his whereabouts then he disclosed his name as Kuljinder Singh@ Kaka son of Surjit Singh resident of village Chehlan, Police Station Samrala District Ludhiana, whereupon myself Inspector/Station House Officer have introduced above said Kuljinder Singh about my identity and said that I, Inspector Kuljinder Kaur NO. 63/PR, am posted as Station House Officer in Police Station City-02 Khanna and the police party is with me, the police party is in uniform along with their ranks and our name plates are affixed on the uniform. I have doubt that there is any intoxicant/objectionable item in your truck bearing registration No PB23-K-9942 but you have legal right that you can get done the search of you and your truck through any Magistrate or Gazetted officer, who can be called to the spot, or you can be taken before him. Above said Kuljinder Singh has replied that I do not want to get done the search of me and my truck bearing registration No. PB23-K-9942 from you, I want to get done the search of me and my truck through any Gazetted officer, who may be called to be spot. Therefore myself Inspector/Station House Officer has written the non-consent statement of Kuljinder Singh and signature of Kuljinder Singh and witnesses are taken on the statement. Thereafter at about 02.40 AM, myself inspector/ Station House Officer has made phone call from my mobile NO. 95929-14266 to the mobile No. 78374- 54808 of Hon'ble Karnail Singh, PPS, Deputy Superintendent of Police, Sub Division Khanna and after

informing him about the facts, requested to come to the spot. At about 03.10 AM, Hon'ble Deputy Superintendent of Police, Khanna in police uniform along with gunman Sr. CT Satpal Singh No. 98/Khanna came through government Bolero bearing registration No.PB65-BC-2510 who has been informed about the facts of case. The Hon'ble Deputy Superintendent of Police Khanna has informed above said Kuljinder Singh about his identity that I, Karnail Singh, PPS, posted as Deputy Superintendent of Police Sub Division, Khanna. I am in police uniform with rank and my name plate is affixed on my uniform. I want to conduct the search of you and your truck bearing registration No. PB23-K-9942, but you have legal right that you can get conduct the search of you and your truck through any other senior Gazetted officer or Magistrate." Therefore Kuljinder Singh has replied that I have trust on you, you can conduct the search of me and my truck bearing registration No. PB23-K-9942" therefore Hon'ble Deputy Superintendent of Police, Khanna has written the consent statement of Kuljinder Singh, which is signed by witnesses and above said Kuljinder Singh. Thereafter the efforts were made to join 7-8 passersby in the police party but all have gone from the spot by informing about their helplessness. Thereafter under the supervisions of Deputy Superintendent of Police Khanna, myself Inspector/Station House Officer has conducted the search of above said Kuljinder Singh and truck bearing registration No.PB23-K-9942 make Ashoka Leyland. During search 04 black-gray colour heavy plastic bag recovered from the cabin of his truck, which are brought down from the cabin of truck with the help of associate officials and on opening the mouth of bags and checking them, poppy husk recovered from it. Myself Inspector/ Station House Officer has weighted the above said four bags with the computerized weighing machine which was already present in my investigating kit and on weighing the weight of each bag is found to be 25-25 Kg, i.e. 1.00 Qtl. poppy husk is recovered from all the four bags.

Thereafter the four plastic bags containing poppy husk weight 25 Kg each has been marked as Mark P-1, P-2, P-3 and P-4 and four parcels of poppy husk have been prepared and sealed the said bags of poppy husk marked with mark P-1,P-2, P-3 and P-4 with my seal bearing impression KS and also prepared the sample of seal. After using seal, the same is handed over to ASI Madan Singh No. 544/Khanna. Thereafter Hon'ble Deputy Superintendent of Police sir has sealed the four bags of poppy husk marked with mark P-1,P-2, P-3 and P- 4 with his seal bearing impression KS and after using seal, he has kept it with him. Thereafter myself ASI has taken the 4 bags of poppy husk marked with mark P-1,P-2, P-3 and P-4 duly sealed with seal bearing impression KS+KS along with sample of seal and truck make Ashok Leyland bearing registration No.PB23-K-9942 into police possession through seizure memo. The signature of accused Kuljinder Singh and witnesses have been taken on the seizure memo and Hon'ble Deputy Superintendent of Police has attested the memo. Accused Kuljinder Singh has committed offence under section 15,25/61/85 of NDPS Act by keeping 1Kg of poppy husk in his possession. Therefore after writing Ruqa, the same is being sent to the Police Station by the hand of ASI Ashok Kumar No. 115/Khanna for registration of case. After register case, number of the same be intimated, special reports be issued. DCR Khanna be informed. Myself Inspector/Station House Officer along with associate officials is busy n investigation on the spot. Sd/ Kuljinder Singh Inspector, Station House Officer, Police Station City Khanna, dated 18.06.2023, within the area of Lalheri Chowk, Khanna.'

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 merely on the ground that he was driving the truck at the time when alleged contraband was recovered from the

above-said truck, whereas the petitioner has no concern with the alleged recovery. He further argued that investigation in the matter is complete, challan stands presented, nothing is to be recovered from 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. According to which, the petitioner is behind bars for 1 year, 9 months and 12 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery effected falls within the category of commercial quantity, therefore, rigours of Section 37 of NDPS Act would be attracted.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 1 year, 9 months and 12 days and is not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 12.12.2023, charges have been framed on 23.07.2024 and out of total 10 prosecution witnesses, 3 have been given up and 7 are to be examined. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr.***

2018(2) R.C.R. (Criminal) 131. 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 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

04.04.2025

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>