



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21798-2025
DECIDED ON: 30.04.2025

GURSEWAK SINGH ALIAS BINDER

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aajeshwer Singh Grewal, 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 BNSS 2023 for grant of Regular Bail to the petitioner in FIR no. 28 dated 21.03.2024, under Section 22(c),27,29,61,85 of NDPS Act, PS Sadar, Bathinda.

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

“Statement of ASI Jarnail Singh 1172/BTI, C.I.A. Staff-2, Bathinda, Mob.No. 9056100827, stated that today I ASI along with HC Bikramjeet Singh 1380/BTI, SCT Kamaldeep Singh 1601/BTI, SCT Harinder Singh 617/BTI, SCT Balwinder Singh 1028/BTI on Govt. car Balero Capper No. PB03AT-0395, the driver of which is CT Lovepreet Singh 162/BTI and the Police party for the purpose of patrolling and checking of suspected persons reached at 400 Killa Growth Centre by

passing through Bathinda Mansa Road to under bridge Railway Lines, then time was about 04:30 PM that 50 Kamas behind Cancer Care Hospital on the left hand side towards the road leading to Cargill Feed Factory godowns, on the left side of group of Pahari Kikkar trees on the kacha passage, three young persons were seen standing with one motorcycle Bullet Royal Enfield colour black, one motorcycle colour Blank Blue, one Scooty colour Black and three young men were seen finding strips of intoxicants in a plastic bag colour white kept on the seat of Bullet motorcycle and whose mouth was open. On which I ASI due to suspicion after stopping the vehicle caught above three young persons along with motorcycles/scooty with the help of companions. I ASI asked the names of apprehended young persons one by one, then first person introduced himself as Lakhwinder Singh @ Gori son of Gurmail Singh @ Mithu resident of Village Gulabgarh, District Bathinda, second person introduced himself as Gursewak Singh @ Binder son of Ganga Singh, resident of Gehri Baghi, District Bathinda and third one introduced himself as Baljit Singh @ Nikka son of Thana Singh, resident of Chak Fateh Singh Wala, District Bathinda. Due to open mouth of plastic bag colour white hold by them, the strips of intoxicated tablets were clearly visible. I ASI is not competent to investigate into the offence under NDPS Act, then at about 04:50 PM, Munshi CIA Staff-2 Bathinda HC Sukhjinder Singh 1527/BTI was informed about the matter and was requested to send Investigating Officer at the spot for taking further action. On which at about 05:20, you along with HC Gurpreet Singh 630/BTI, CT Yadwinder Singh 478/BTI on Govt. vehicle No. PB03R-3296 with laptop printer and investigation kit reached at the spot. On which I after informing you about the facts handed over above young persons with plastic bag colour white, in which the strips of intoxicated tablets are clearly visible and motorcycles/scooty above said in intact condition for further action. I don't tamper with the strips intoxicated tablets and motorcycles/scooty above said, which are in the possession of Lakhwinder Singh

@ Gori, Gursewak Singh @ Binder and Baljit Singh a Nikka above said and do not allow anyone to tamper. The statement has been recorded to you, read over, heard and is correct.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and nothing has been recovered from the present petitioner. He further contends that the petitioner is a man of clean antecedents as he is not involved in any other case. It has been contended on behalf of the petitioner that after completion of investigation, challan stands presented to Court on 13.09.2024, charges have been framed on 05.11.2024 and out of total 13 prosecution witnesses none has been examined so far, meaning thereby, the conclusion of the trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 alleged contraband i.e. 2800 strips of Tridol-100 containing 10 tablets each i.e. total 28000 tablets were recovered from the petitioner and his co-accused persons.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 01 year, 01 month and 03 days added with the facts that the petitioner is a man of clean antecedents as he is not involved in any other

case; investigation is complete, wherein after framing of charges on 05.11.2024 out of total 13 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.

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 Nimesh 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**

30.04.2025

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No