

2025:PHHC:063650



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

**CRM-M-24557-2025
DECIDED ON: 14.05.2025**

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

Present: Ms. Chetana Thakur, Advocate for the petitioner.
Mr. Jastej Singh, Addl. AG Punjab

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

This petition has been filed Under Section 483 of "The Bharatiya Nagarik Suraksha Sanhita, 2023" (BNSS) (including for 439 CRPC OLD Law) praying for regular bail in FIR No. 143 dated 15.09.2023, under section 21(c) 29-A, 27 of NDPS Act 1985, registered at P.S. Sarhali, District Tam Taran, during the pendency of trial, in the interest of justice.

2. Facts

Facts as narrated in the FIR reads as under:-

“SHO PS Sarhali, Sat Sri Akal, Today I SI along with SI Surjit Singh 52/TT ASI Paramdeep Singh 42/FZR, ASI 1 Harmeeek Singh 1793/TT HC Avtar Singh 50/TT C. Sukhdeep Singh 783/TT, PHG Amarjit Singh 4607. along with Laptop printer accessory were riding in a government vehicle No. PB-07-T-4868 whose driver was ASI Beant Singh No. 1880/TT and were patrolling in the area of Patti turning

point of Sarhali in the search of the bad elements then the informant gave me information that Surjit Singh alias Ganda son of Jassa Singh, resident of Ratoke, Gurlal Singh son of Kashmir Singh, resident of Dasuwal, who, in collaboration with Pakistani smugglers, send locations through WhatsApp and other smart apps to bring Heroin and further supply the said Heroin, to the persons sent by the Pakistani smugglers and also after finding their own customers and send the earned money (Drug money) according to Pakistanis smugglers, through Naveen Bhatia alias Bobby son of Brij Lal resident of Amritsar, Sumit Sharma alias Shoke son Prem Kumar resident of Holly City, Amritsar to Pakistan, Dubai and other foreign countries. After taking the location sent by Naveen Bhatia and Sumeet Sharma, the said drug money is further deposited by Hardeep Singh @ Mintu Son of Dalbir Singh Resident of Amritsar and Karamjit Singh Son of Balwinderjit Singh Resident of Khasa Amritsar City. Even today both Surjit Singh alias Ganda and Gurlal Singh are bringing heroin and earned money (drug money) from Patti Side on their motorbike Splendor black in color, and if the barricading is done at a proper place then they both be nabbed with Heroin and drug money. The information seems to be accurate, solid and concrete, the offence at this stage falls under sections 21,27-A, 29/61/85 NDPS ACT, so the Ruqa after getting it typed and print it out is being sent to the Police Station through constable Sukhdeep Singh 783/TT for registration of the formal FIR. Register the case and inform about the case number. Special reports should be issued and sent to the service of the senior officers and the Ld. Magistrate, a report should be given to the control room, then I am proceeding towards the place disclosed by the informer for laying barricade after taking the information from informer about the appearances and description of Surjit Singh @ Ganda and Gurlal Singh and made him free and also shared the information with the accompanied police officials. Today in the Area of Patti turning point Sarhali Time:2:50 PM Sd/- Balwinder Singh SI, CIA Tarn Taran dated 15.09.2023.'

3. Contentions:**On behalf of the petitioner**

Learned counsel for the petitioner at the outset without going into the merit submits that the petitioner is in custody since 15.09.2023, wherein after framing of charges on 14.05.2024 out of total 14 prosecution witnesses, only one has been examined so far. He therefore, submits that there is delay in trial and no useful purpose would be served by keeping the petitioner behind bars.

On behalf of the State

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year 7 months and 23 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that recovery of contraband i.e., 400 grams of heroin in the present case is commercial in nature. Therefore, rigour of Section 37 of NDPS Act would be attracted in this case.

4. Analysis

Considering the sufficient custody period suffered by the petitioner i.e. 1 year, 7 months and 23 days; he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 17.03.2024, charges have been framed on 14.05.2024 i.e. and out of total 14 prosecution witnesses, only one has been examined so far, meaning thereby 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 “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 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

14.05.2025

Meenu

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