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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12297-2025
DATE OF DECISION: 27.03.2025

ARIF ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Manpreet Ghuman, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked for the forth time under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case of FIR No. 121, dated 28.07.2022 under Section 18/29/61/85 of NDPS Act, Police Station Lalru, District SAS Nagar Mohali.

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

“Copy of ruga, SHO, Police Station Lalru, Jai Hind, Today, I, SI alongwith ASI Onkar Singh no.425/SAS Nagar, CJarnail Singh 12/52/SAS Nagar, HC Tarsem Singh no.172 and PHG Kuldeep Singh no. 30691 with laptop and Printer were present at T-Point Lehli-Ambala- Chandigarh national Highway in connection with Nakabandi and checking the passersby vehicle. At about 2.15 PM. One Haryana roadways bus came from the side of Ambala about 100

meters behind the naka, two young boys empty handed alighted from the running bus, and run towards backside. I, SI on the basis of suspicion apprehended both the young boys with the help of the companions and asked their names and addresses. First young boy disclosed his name as arif son of Abrar, resident of Village Majgawan, police Station Bisaratanj, Tehsil Ambla, District Bareilly(UP), aged about 23 years and second young boy disclosed his name as Ram Lakhan son of Devi Ram, resident of Village Majhgawan, police Station Bisaratanj, Tehsil Amla, District Bareilly(UP), aged about 20 years. They were asked reason of alighting from the running bus and run towards backside but they could not give satisfactory answer and become perplex. I being suspected that there is something intoxicant material with them I SI disclosed my identity to them and said that I SI Mandeep Singh No.42/CP/ASR, am working in Punjab Police Department and posted as Incharge at Police Post Lehli and told them that I, SI suspect that there is something intoxicant substance with them and hence their search is to be conducted. They are legally entitled to get themselves searched in the presence of any Magistrate or Gazetted Officer, they can be called at the spot and they can be brought before them. Upon this, above mentioned Arif and Ram Lakhan though little while and said that they want to get themselves searched in the presence of any Gazetted Officer. Whereupon, I, SI recorded the dissent statements of above mentioned Arif and Ram Lakhan separately. Memo of dissent statement was signed by above mentioned Arif in Hindi whereas Ram Lakhan put his left thumb impression. Memo was also signed by the witnesses. Thereafter, I, Si made a call from my mobile No.9150004003 to D.S.P: Harwinder Singh on his mobile No.98767-00751 and made him aware with the facts of the case and requested to reach on the spot. At about 2.45 P.M., D.S.P. Sahib along with gunman and driver came at the spot in Govt. vehicle bearing registration No.PB-65-AH-7588. D.S.P. Sahib disclosed his identity to above mentioned' Arif and Ram Lakhan and told them that "I, Harwinder Singh, P.P.S. am posted as D.S.P. at Sub Division, Derabassi. I have received information that you are having some intoxicant substance. I want to search you, but you are legally entitled to get yourselves searched in the presence of any Magistrate

or other Gazetted Officer. They can be called at the spot or you can be brought before them". Whereupon, above mentioned Arif and Ram Lakhan reposed faith in him and said that he can search them. Upon this, consent statements of above mentioned Arif and Ram Lakhan was recorded separately, which was read over to above mentioned Arif and Ram Lakhan. Arif signed the memo in Hindi, Ram Lakhan put his left thumb impression and witnesses also signed the same. I, SI tried to join independent witness at the spot but everyone disclosed their problem and went away. Thereafter, as per the instructions of DSP Sahib, I, SI conducted personal search of above mentioned Arif and checked the polythene envelop which he had wrapped along his stomach with the help of tape below his shirt and opium recovered from it. The recovered opium along with polythene envelop weighed which came to be 1 Kgs. 300 grams. Thereafter, I, Si, conducted personal search of above mentioned Ram Lakhan and checked the polythene envelop which he had wrapped along his stomach with the help of tape below his shirt and opium recovered from it. The recovered opium along with polythene envelop weighed which came to be 1 Kgs. 300 grams. I, SI sent HC Jarnail Singh No.1252/S.A.S. Nagar and brought required articles. Recovered 1 Kg. 300 grams/1 Kg.300 grams opium were kept in two plastic containers separately along with polythene envelope and converted into parcel. Both the parcels were sealed by me SI with my seal bearing letters MS and prepared the sample seal separately. After use, seal was handed over to ASI Onkar Singh No.425/S.A.S. Nagar. Parcels of opium duly sealed with seal bearing letters MS was sealed by DSP Sahib with his seal bearing letters HS and attested both the parcels. DSP prepared the sample of sample seal as also of his seal and attested the sample seals. After use, D.S.P. Sahib kept his seal with himself. Both the parcels of opium along with sample seals were taken into police possession through a separate recovery memo. Recovery memo of opium was prepared. D.S.P. Sahib attested the recovery memo. Above mentioned Arif son of Abrar, resident of Majhgawan, Police Station Birasat Ganj, Tehsil Amla, District Bareilly (U.P.) and Ram Lakhan son of Devi Ram, resident of Majhgawan, Police Station Birasat Ganj, Tehsil Amla, District Bareilly (U.P.) have committed offence under Sections 18, 29 NDPS Act by keeping in their possession 2 Kgs.

600 grams of opium. Therefore, ruga is written and same is being sent to the police station Lalru by hand through PHG Kuldeep Singh No.30691 for registration of case under said section against above mentioned accused Arif and Ram Lakhan, residents of village Majhgawan, Police Station Birasat Ganj, Tehsil Amla, District Bareilly (U.P.). After registration of case I may be intimated case number. Senior Officers and Incharge, Control Room be informed. Special reports be issued. I, SI along with companions am busy in investigation at the spot. Sd/- Mandeep Singh, SI, Incharge, Police Post Lehli, Police Station Lalru dated 28.07.2022..."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was neither present at the spot nor any recovery has been effected from him. He further contends that the alleged contraband i.e. 1 kg 300 grams of opium has been fastened upon the petitioner just to hush-up the NDPS matters as is happening throughout the State. He asserts that co-accused Ram Lakhan has already been granted concession of regular bail vide order dated 27.02.2025 passed in CRM-M-1347-2025. It has been further contended that the petitioner 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 alleged contraband i.e. 1 kg 300 grams has been recovered from the conscious possession of the petitioner.

4. Analysis

Be that as it may, considering the custody period i.e. 02 years, 07 months and 25 days for which the petitioner has suffered incarceration; co-accused person namely Ram Lakhan has already been granted concession of regular bail by this Court; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 09.11.2022, charges have been framed on 28.07.2022; out of total 09 prosecution witnesses only 03 witnesses have been examined so far, 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. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his 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

27.03.2025
anuradha

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