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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-18073-2025

DATE OF DECISION: 06.05.2025

VISHWAS

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Sushil Sheoran, Advocate for the petitioner(s).

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

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

This petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita,2023 for grant of regular bail in FIR No.352 dated 18.5.2023 under section 20(b)(ii)(c) (section 27A added later-on) of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Hansi City, District Hansi.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

*‘To, SHO P.S. Hansi, Jai Hind, Today dated 18.05.2023 I ASI Hemraj No. 1703/RTK of Haryana State Narcotics Control Bureau Unit Hisar, along with fellow officers EASI Sanjay Kumar No. 364/Hisar, HC Vikrant No. 218/Hisar, and Si. Rajbir No. 221/Dadri, were present in official vehicle No. HR 05GV 2751*



*make ISUZU driven by Pramod No. 5/688 HAP near the Shani Mandir on Lalpura Road in village Lalpura for the prevention of narcotic drug offenses in Hansi. Where a secrete informer informed us that Vishwash son of Kamaldas resident of Sisai Pul Hansi and Chatarpal son of Juna resident of village sulchani district Hisar are coming on a motorcycle No. HR 21L 1223 make SPLENDER PLUS carrying narcotics. If an immediate checkpoint is set up, the above said persons with motorcycle could be caught with narcotics. Upon receiving confirmed information, I ASI Hemraj informed fellow employees and prepared a report under section 42 of the NDPS Act which was sent to PS City Hansi for information through HC Vikrant No. 218/Hisar. After that I ASI along with fellow employees got busy with the government checkpoint. After some time, two young boys from Lalpura village were seen coming on a motorcycle. Between them, a plastic bag or white-colored substance was kept on the motorcycle. Upon seeing the police party standing in front of them, the motorcycle driver tried to flee by suddenly turning the motorcycle back, but I ASI with the help of my fellow employees apprehended both boys. The motorcycle No. HR 21L 1223 make SPLENDER PLUS matched the description provided in the report. Upon questioning by ASI, the motorcycle driver first stated his name as Vishwash son of Kamaldas, Sisai Pul, Hansi who was lame. The boy sitting behind on the motorcycle stated his name as Chatarpal son of Juna, Sulchani village, Hisar district. After that I ASI based on the confirmed information about the narcotic substance in the plastic bag kept in their possession, issued a notice under section 50 of the NDPS Act, stating: "I ASI Hemraj No. 1703/RTK, Haryana State Narcotics Control Bureau Unit Hisar appointed as an investigating officer. I have provided a complete introduction of myself and my team to you Vishwash son of Kamaldas, Sisai Pul, Hansi. You Vishwash and Chatarpal son of Juna, Sulchani village, Hisar district are riding on motorcycle No. HR 21L 1223 make SPLENDER PLUS. You are the driver of the motorcycle. Both of you have kept a plastic bag of white-color between yourselves on the motorcycle for which information about narcotics has been received. You have*



*the legal right under the NDPS Act to search yourself, your motorcycle and the plastic bag kept in your possession in the presence of a Gazetted officer or a nearby magistrate. The gazetted officer or the nearby magistrate can be called upon spot or you can be presented with your motorcycle and the plastic bag in your possession in front of them. You have been informed and explained about the notice. The notice under section 50 of the NDPS Act has been prepared. The accused Vishwas and the witnesses signed the notice under Section 50 of the NDPS ACT. Thereafter accused Chatarpal on the basis of a reliable information that he had an intoxicating substance in his possession was issued a notice under Section 50 of the NDPS ACT stating that "I, ASI Hemraj No. 1703/RTK, Haryana State Narcotics Control Bureau Unit Hisar posted as an investigating officer. I have introduced myself and my team to you Chatarpal. You Chatarpal and Vishwas son of Kamal Dass, resident of Sisai Pul, Hansi are riding on motorcycle No. HR 21L 1223 (make SPLENDER PLUS). Both of you have kept a bundle of plastic wrapped in white color between you on the motorcycle. Information has been received that there is an intoxicating substance in it. You have the legal right to search under the provisions of the NDPS ACT to get the search of yourself, your motorcycle and the bundle of plastic in your possession conducted in the presence of a gazetted officer or a nearby magistrate or they can be called on the spot or you can be produced before them along with the motorcycle and the bundle of plastic in your possession. The notice has been read and explained to you. Please be informed from the notice and state your willingness. The notice under Section 50 of the NDPS ACT has been prepared." The accused Chatarpal placed his left thumb impression on the notice under Section 50 of the NDPS ACT and the witnesses signed the notice. Thereafter accused Chatarpal after some thought and consideration made his reply to the notice under Section 50 of the NDPS ACT stating that "I, Chatarpal son of Juna, resident of village Sulchani, district Hisar. You ASI Hemraj No. 1703/RTK, Haryana State Narcotics Control Bureau Unit Hisar, have introduced yourself and your team to me. I have understood*



*the notice under Section 50 of the NDPS ACT given by you. I am sitting behind the driver Vishwas son of Kamal Dass, resident of Sisai Pul, Hansi district Hisar on motorcycle No. HR 21L 1223 (make SPLENDER PLUS). Both of us have kept a plastic bag of white color between us on the motorcycle. Whatever is in our possession belongs to both of us. I want to get the search of myself, our motorcycle and the plastic bag in our possession conducted in the presence of a gazetted officer on the spot. Please call a gazetted officer on the spot. I have dictated my reply notice to you. You have read and explained the reply to me. The reply under Section 50 of the NDPS ACT has been prepared. On which the accused Chatarpal placed his left thumb impression and the witnesses signed the notice." Thereafter, at around 06:30 PM, as per the list of gazetted officers issued by the Deputy Commissioner Hisar in connection with NDPS, ASI Hemraj contacted from mobile number 8708046211 to the gazetted officer Shri Mahipal B.A.O, B.A.O Office Hansi on his mobile number 94162 44961 and informed him about the situation and requested him to come to the spot. Shri Mahipal B.A.O informed ASI Hemraj that he was currently in Hisar and asked him to contact the gazetted officer Dr. Shri Sudhir Malik, Deputy Civil Surgeon, Hansi on his mobile number 98129 88877. Then ASI Hemraj contacted from his mobile number 8708046211 to Dr. Shri Sudhir Malik, Deputy Civil Surgeon, Hansi on his mobile number 9813121515. At 06:33 PM, ASI Hemraj contacted Dr. Shri Sudhir Malik from his mobile number 8708046211 and informed him that he had been transferred and could not come to the spot. ASI Hemraj then again contacted Shri Mahipal B.A.O, B.A.O Office Hansi on his mobile number 9416244961. Shri Mahipal informed ASI Hemraj that he did not have a vehicle and asked ASI Hemraj to send a vehicle to pick him up. HC Vikrant No. 218/Hisar who had registered a report under Section 42 of the NDPS Act arrived at the spot. ASI Hemraj sent HC Vikrant No. 218/Hisar to Hisar in the government vehicle to bring Shri Mahipal B.A.O to the spot. ASI Hemraj and his fellow employees waited for Shri Mahipal B.A.O at the spot. At 07:55 PM, Shri Mahipal B.A.O arrived at the spot. ASI Hemraj*



*informed Shri Mahipal B.A.O about the situation and presented the notice and reply notice under Section 50 of the NDPS Act. Shri Mahipal B.A.O examined the notice and reply notice under Section 50 of the NDPS Act. Shri Mahipal B.A.O questioned the accused Vishwas and Chatarpal. ASI Hemraj offered to be searched by Shri Mahipal B.A.O in the presence of Shri Mahipal B.A.O, B.A.O Office Hansi. Shri Mahipal B.A.O searched ASI Hemraj and his team members. No narcotics or illegal items were found during the search. A search offer was prepared stating that no narcotics or illegal items were found on ASI Hemraj and his team members. The accused Vishwas and Chatarpal and the witnesses signed the form and Shri Mahipal B.A.O verified the form search offer. Thereafter, Shri Mahipal B.A.O instructed ASI Hemraj to search the accused Vishwas and Chatarpal and the plastic bag in their possession in his presence. ASI Hemraj asked the passersby to be witnesses to the proceedings but they all expressed their helplessness and left the spot. ASI Hemraj then searched the accused Vishwas, Chatarpal, the motorcycle and the plastic bag. Narcotic substance ganja was found in the white colored plastic bag. The recovered ganja was mixed on a tarpaulin and put back into the same plastic bag. The weight of the plastic bag including the narcotic substance ganja was measured using EASI Sanjay Kumar 364/Hisar. A case has been registered against the accused under the said offense. The computer copies of the case report have been prepared and sent to the Duty Magistrate and the above officers by email. A copy of the police investigation along with the original report is being sent to the ASI on the spot. SI Makhan 416 BWN HSNCB Hisar has been informed to reach the spot for further investigation. The SHO has been informed about the situation. This case is being registered in the presence of ASI Jogendra Singh 136. Since ASI Hemraj HSNCB Unit Hisar does not have I/o code in CCTNS, I/o code of ASI Anil Kumar 04 Police Station Hansi is being registered.'*



### 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. He submits that co-accused namely Chattarpal who is similarly situated was admitted regular bail by this Court vide order dated 19.03.2025 passed in CRM-M-4551-2025 after having undergone custody for a period of 1 year, 9 months and 29 days, primarily on the ground that conclusion of trial will take long time. It is contention of the counsel for the petitioner that the aforesaid fact will also apply to the case of present petitioner, as on date the trial has still not proceeded and the petitioner has undergone two months more custody than the co-accused, i.e. 1 year, 11 months and 14 days and out of total 33 PW, only one PW has been partially examined. He has further argued that the antecedents of the petitioner are clean. Hence, prays for grant of regular bail to 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.

Reply by way of affidavit of Dr. Sumita Misra, IAS, Additional Chief Secretary to Govt. Haryana, Home Department has been filed on behalf of the State Counsel, the same is also taken on record. Copy of the same has been furnished to the counsel opposite.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that 20.800 kg. Ganza i.e. commercial in nature was recovered from the present petitioner, hence, prays for dismissal of the petition.



#### 4. Analysis

In view of the discussion made hereinabove, it would be suffice to infer that conclusion of the trial will certainly take long time, as far as reply filed by the State is concerned, the same has been perused and according to which, it is evident that procedural delay has taken place, however, it is not attributed to either of the parties including the trial Court for non-examination of the witnesses. Moreso, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, and therefore, detaining the petitioner behind the bars for an indefinite period would solve 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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

**(SANDEEP MOUDGIL)  
JUDGE**

**06.05.2025**  
*anuradha*

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