

221

2025:PHHC:058692



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18899-2025
DECIDED ON: 05.05.2025

JASWINDER SINGH @ JASS

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S. Khaira, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in case FIR No. 40 Dated 07.04.2024, (Annexure P-1) under Sections 22/25/29 of NDPS Act, 1985, registered at P.S. Sri Anandpur Sahib, District Rupnagar.

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

“Copy of ruga, Jai Hind, Today, I, ASI alongwith ASI Raj Kumar 901/R, C. Sandeep Kumar 582/R, P.H.G. Parmod Kumar through a Government vehicle No.PB-65BF-2068, whose driver C.Raj Kumar 192/R, in connection with patrolling and checking of suspicious persons, while doing towards the Bhakra Canal Patri Ganguwal to Bikarpur side, while conducting the nakabandi and started checking of the

vehicles, near the gate of Patri, then the time would be about 7.10 pm. During checking a car bearing NO.PB-12-s-0301, colour white came from Bikapur side, then they tried to turn back the car after seeing the police party, due to no space to turn the car, then I ASI with the help - of fellow officials, apprehended the four persons from the car and enquired their names and address. The driver of the car disclosed his name as Maninderjit Singh alias Manu son of Dalbir Singh resident of Power Colony, H.No.03 Type-II, Sri Anandpur Sahib, the person who was sitting on the conductor seat of the car disclosed his name as Kirandeep alias Kinnu son of Sukhwinder Singh, resident of Village Mangewal, the boy who was sitting on the rear seat, disclosed his name as Davinder Singh son of Gurdeep Singh, resident of Shampura, New Colony, Rupnagar and more person sitting on the rear seat tried to escape after opening the door of the car, who fall on the road while he was running, he was apprehended while fell. • down, he was got injury on his head, he disclosed his name as Jaswinder Singh alias Jass son of Surinder Singh, resident of Village Dher. Then I, ASI checked the above said car, and on checking, a polythene lying near the lever of the car was found, it seems containing some intoxicant powder inside. On enquiry from the said person, but they failed to give any satisfactory reply. Upon which, Maninderjit Singh alias Monu, Kirandeep Singh alias Kinnu, Davinder Singh and Jaswinder Singh alias Jass above said, by keeping intoxicant powder in inside car, have committed offence under Section 22/61/85 NDPS Act, so the ruga is being sent for registration of FIR under Section 22/61/85 NDPS Act against the above said persons, through HC Sandeep Kumar 582/R to the police Station. In this regard, information was given on telephone to the SHO of the police Station to send the competent officer to reach on the spot. After registration of FIR, case number be intimated. Information should be given to higher officer and control room Rupnagar through wireless.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as nothing has been recovered from his conscious possession. He further contends that the alleged contraband i.e. 255 grams of intoxicant powder was recovered from the dashboard of the alleged vehicle, wherein the petitioner was sitting on the rear seat and the said contraband is marginally over and above the commercial quantity. It has been further contended that co-accused namely Maninderjit Singh @ Maninderjeet Singh @ Mannu has already been granted the concession of regular bail by this Court vide order dated 23.04.2025 passed in CRM-M-15688-2025.

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 petitioner is a habitual offender as he is involved in another case of similar nature.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 01 year and 23 days added with the facts that the quantity of alleged contraband is marginally over and above the commercial quantity; co-accused namely Maninderjit Singh @ Maninderjeet Singh @ Mannu has already been granted the concession of regular bail by this Court vide order dated 23.04.2025 passed in CRM-M-15688-2025; investigation is complete, wherein after framing of charges on 28.10.2024 out of total 19 prosecution witnesses, 04 witnesses have been examined and 05 witnesses have been

given up, 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.

Taking into consideration the following orders passed by the Coordinate Benches of this Court wherein the recovery from the accused was marginally over and above the commercial quantity for the respective contraband in each case, the Courts have taken a lenient view while granting bail to the accused therein i.e. *Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022* decided on 04.04.2022, *Pardeep Singh versus State of Punjab, CRM-M-46244-2022* decided on 19.01.2023, *Hari Yadav @ Haiya versus State of Punjab (CRM-M-37645-2021)* decided on 11.11.2022, '*Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)*' decided on 19.01.2022, '*Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020*, decided on 27.08.2020, *Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021*, decided on 31.08.2021, *Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021*, decided on 27.01.2021, *Gurpreet Gopi Versus State of Punjab, CRM-M-41039-2019, Singh* decided on 26.02.2020, *Dalbara Singh Versus State of Punjab, CRM-M-47880-2022 decided on 16.01.2023*', and *Vivek Watts versus State of Punjab, CRM-M-13791-2022* decided on 15.02.2023.

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 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.

05.05.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No