



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

216

CRM-M-39614-2023  
DATE OF DECISION: 29.04.2025

UPESH GOPI MOCHI

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepender Singh, 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 439 of the Code of Criminal Procedure for release of the petitioner on Regular Bail in case FIR No.62 dated 08.08.2022 u/s. 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 P.S. GRP Chandigarh, District GRP Ambala Cant.

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

*‘Sir, Station House Officer, Government Railway Police (H), Chandigarh Subject: In the area of Railway Station, in front of railway guest house is situated, a suspected person namely, Upesh Gopi Mochi is arrested and recovery of contraband from his possession for further proceedings. Sir, on the aforesaid subject, it is stated that on 7.8.2022, the aforesaid undersigned along with other officials SI Dinesh Singh Deswal SIB/UMB, cm Sandeep*



*Kumar CIB/UMB, ASI Majeet Singh, C. Sukhwinder Singh, Ct. Virneer Singh, CPDS/Team Ambala Cantt. was present in the circulating area of Chandigarh Railway Station on 15.8.2022 in connection with independence day with respect to special checking in front of the rest house, one suspected person who on query later on told his name as Upresh Gopi Mochi son of Gopi Mochi, resident of Wakola Bridge, Santacruz (east) Mumbai Maharashtra who on stopping was checked his black bag after taking off on his shoulder, in which inside a carton box in yellow white red brown colours on which Pears Pure and Gentle Buy 500 g Get 125 G Free was found written and out of which four wrapped packets in owl shape with transparent tape out of which two packets were opened and one was broken from the one side found. Besides this, one blue color T-Shirt, one strips shorts in gray colour, one black cap were found. An inquiry was made to accused Upesh Gopi regarding contraband, who on questioning told that he was carrying contraband via train from Delhi to Chandigarh for supply. For further proceedings, ASI Rajesh Kumar, GRP, Chandigarh on duty was called on the spot and apprising the case, the aforesaid Upesh Gopi and black bag containing contraband with carton box were presented before him. Sir, it is humbly requested for taking further proceedings after taking into possession the aforesaid suspected contraband and suspected person Upesh Gopi Mochi son of Gopi Mochi, resident of Wakola Bridge, Santacruz (east) Mumbai, Maharashtra. Sd/- Kabul Chand SI, RPF CDPS team Ambala dated 7.8.2022 at 22.30 a.m. Police Proceedings: Sir, SHO,*

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 no offence is made out against the petitioner and nothing has been recovered from him. He further submits that the petitioner has already



been granted concession of interim regular bail by this Court vide order dated 01.03.2024. He has further argued that the antecedents of the petitioner are clean. Moreso, the investigation in this case is complete as challan stands presented on 06.04.2023 charges stands framed on 03.07.2023 out of 17 prosecution witnesses, none has been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time, therefore, 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.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the recovery effected from the petitioner is 262 grams of Heroin which is commercial in nature, therefore, Section 37 of NDPS would create a bar for granting him bail.

#### **4. Analysis**

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 7 months and 18 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, also the contraband recovered is marginally over and above the commercial quantity and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 06.04.2023 charges stands framed on 03.07.2023 out of 17 prosecution witnesses, none has been



examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve 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 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. 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

29.04.2025  
anuradha

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