

2025:PHHC:067393



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26386-2025
DECIDED ON: 20.05.2025

GURPREET SINGH ALIAS BABBI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Madan Sandhu, Advocate for the petitioner.
Mr. Rajiv Verma, Senior DAG Punjab

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

This second petition has been filed under Section 483 of BNSS, 2023 grant of regular bail in FIR No. 103 dated 24.07.2023 registered under Section 21(B), 22C, 25 and 27 of NDPS Act, registered at Police Station Sardulgarh, District Mansa.

2. Facts

Facts as narrated in the FIR reads as under:-

“A copy of complaint, Station House Officer, Police Station Sardulgarh, "Fateh" Today myself Insp. along with SI Jarnail Singh 687/Mansa, Constable Gurjit Singh 1157/Mansa, S/C: Parvinder Kumar 1179/Mansa, Constable Jagroop Singh 896/Mansa, Lady/Constable Anuradha 1204/Mansa with electronic kit in a govt. vehicle Bolero Rapid bearing No. PB-31P-3515 which was driven by Sr./Constable Parvinder Kumar 1179/Mansa were indulged in patrolling and checking regarding suspicious persons and we went

to Rodki, Jhanda Khurd, Jhanda Kalan etc., when the police party was patrolling at SarsaKainchiyan on the main road Sarsa Sardulgarh bus station going to Jhanda Kalan via the link road, when we reached the side of village Jhanda Kalan about 01 km from Rodki bus stand, on the right side of the road, there was an unconstructed road, where a motorcycle Hero HF- Deluxe color red black without number was standing beside on which two young men were standing on the seat of the motorcycle, were doing something with the plastic bag color white which was lying on the motorcycle. After seeing the vehicle of the police party, they were started turning, then myself Insp. on the basis of suspicion, with the help of co-officials took the vehicle to the side and controlled the two young men and asked them about their names and addresses. On which the first one revealed his name as Gurpreet Singh alias Babbi son of Jagdish Singh son of Surjit Singh, resident of Nagoki, District Sirsa presently residing at Jhanda Kalan, whose appearance was aged about 32 years, height 5'8", color white, without beard and hair, old scar of injury on the forehead left side and second one revealed his name as Mandeep Singh alias Mannu son of Satpal Singh son of Gyan Singh, resident of Jhanda Kalan, his appearance was aged about 19 years, height 5'7", color wheatish, without beard and hair, old injury mark near right ankle. Then myself Insp. tried to involve the private witness in the police party but could not find anyone. Then myself Insp. told the said Gurpreet Singh alias Babbi, Mandeep Singh alias Mannu, that there seems to be some narcotic substance in the plastic bag lying on the seat of your motorcycle, I want to search you and the plastic bag in your possession and your motorcycle. But you have a legal right that you can get the plastic bag in your possession and your motorcycle be searched by me or in the presence of a Gazetted Officer or the Magistrate or you along with the motorcycle and the bag can be taken to them. On which myself Insp. gave different notices under Section 50 NDPS ACT to Gurpreet Singh alias Babbi, Mandeep Singh alias Mannu who said that we want that the plastic bag in our possession and the motorcycle get it searched by Gazetted

Officer on the spot. On which myself Insp. prepared the information of ranks and rights, disagreements and witnesses appended their signatures on memo. Then myself Insp. informed the Station House Officer of Police Station on official number 9780005017 that Gazetted Officer should be sent on the spot. After some time, it was around 12:45 pm Mr. Manjit Singh, Deputy Supdt. of Police, S.D. Sardulgarh along with government officials in government vehicle Bolero NDPS Act, on which memo of consent regarding personal information, rank and legible rights, was prepared. Witnesses gave their testimony on memo. Then as per the instructions of Hon'ble DSP, myself Insp. checked the plastic bag which was lying on the motorcycle seat from Gurpreet Singh alias Babbi, Mandeep Singh alias Mannu, then pills and a bag containing heroin (white) were recovered from the bag. The seized heroin was weighed with a computer weighing scale, the bag containing 100 grams of heroin (white) was recovered. Then myself Insp. prepared parcel of recovered 100 grams of heroin (white). Then checked the pills in the bag, then 10 stripes of tablets per stripe 10 tablets Total 100 tablets Drugs ETIZOLAM Tablets IP brand Etinet 0.5 mg was recovered. Its batch no. ET5T-035, MFG. 01/2023, EXP. 12/2024, which were Mfg. in India By IOSIS REMEDIES PVT. LTD. Rajpura Road Village Khera Nihla Tehsil-Nalagarh, District-Solan, Himachal Pradesh, India. Then myself Insp. prepared the parcel by keeping the recovered 100 tablets of drug ETIZOLAM Tablets IP brand Etinet 0.5 mg in the same white bag. Then myself Insp. sealed both parcels with seal initials DS and sample stamp was prepared separately and Hon'ble DSP also sealed both parcels with his seal initials MS and stamped on sample with his seal initials MS and both parcels and sample stamp were attested and then myself Insp. handed over the stamp to SI Jarnail Singh 687/Mansa. Then myself Insp. checked the without numbered motorcycle, from which no documents etc. were found regarding the ownership of motorcycle. The chassis number of the motorcycle is MBLHA7157J9J14848 and the engine number is HA11EMJ9J16437. Then myself Insp. took both the parcel of Heroin (White) and parcel of Narcotics Tablets ETIZOLAM Tablets

IP brand Etinet 0.5 mg stamped with DS/MS along with sample stamps and motorcycle without number into possession of police through memo of recovery. Witnesses gave their testimony memo on and Hon'ble DSP also attested the memo. The said Gurpreet Singh alias Babbi, Mandeep Singh alias Mannu by keeping possession of 100 grams of heroin (white) and 100 tablets of the drug ETIZOLAM Tablets IP brand Etinet 0.5 21b/22c/25/61/85 mg committed Offensesu/s NDPS ACT. Therefore, the complaint was handed over to Constable Jagroop Singh 896/Mansa and is being sent to the Police Station for registering the case against the said accused Gurpreet Singh alias Babbi, Mandeep Singh alias Mannu and after registration of case, its number should be informed, intimation should be given to PCR Mansa. Special reports should be issued. Myself Insp. along with co-officials is indulged in investigation on the spot. SD/ Deep Singh SI Police Station Sardulgarh, dated 24.07.2023 At place area Village Rodki AT-03:00 PM", after received the complaint at the Police Station the case was registered under the said section against the said accused Gurpreet Singh alias Babbi son of Jagdish Singh son of Surjit Singh, resident of Nagoki, District Sarsa presently Jhanda Kalan and Mandeep Singh alias Mannu son of Satpal Singh son of Gyan Singh, resident of Jhanda Kalan, the proceedings of the record was completed. Case file along with original complaint was handed over to Ct. and is being sent to SI Deep Singh 292/Mansa on the spot. Copy of FIR as special reports is being sent to the service of Area Magistrate and Senior Officer through Ct. Lovepreet Singh 478/Mansa. A separate intimation is being given to PCR Mansa. Completion Report NO. 47."

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 on the basis of secret information and the alleged recovery of contraband i.e., 100 grams of heroin and 100 tablets of Etinet 0.5. He further submits that as per the FSL report, the 'Etizolam' was the

salt in the said tablets of Etinet 0.5. He contends that the alleged recovery was not effected from the laptop bag lying on the motor cycle of the petitioner.

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 9 months and 29 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that recovery of contraband 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 facts that the petitioner has already suffered incarceration of 1 year, 9 months and 23 days and is on production warrants in two other cases, which are not under the NDPS Act; 100 grams of recovered heroin is falls under non-commercial quantity added with the fact that investigation is complete, challan stands presented on 22.09.2023, charges have been framed on 17.10.2023 and out of total 15 prosecution witnesses, only five have been examined so far. This Court is sanguine of the fact that 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

20.05.2025

Meenu

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