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2025:PHHC:053594



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M-20423-2025  
DECIDED ON: 25.04.2025**

**RAGHVIR SINGH ALIAS RAGHU ALIAS RAGHBEER SINGH  
.....PETITIONER**

**VERSUS**

**STATE OF PUNJAB**

**.....RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Vikram Satpal Anand, Advocate and  
Ms. Shiny Chopra, Advocate  
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

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**SANDEEP MOUDGIL, J (ORAL)**

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 of the Code of Criminal Procedure 1973 for grant of regular bail to the petitioner in FIR No.12 dated 15.03.2023, under Sections 21, 25 of Narcotic Drugs and Psychotropic Substances Act 1985 and Section 379 Indian Penal Code, 1860 (Section 411 I.P.C. added later on), Police Station Thulliwal, District Barnala (Annexure P-1).

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

*Copy Officer Incharge, Police Station Thulliwal, Fateh, today  
1 SI/SHO alongwith SI Jagtar Singh 930, Sr. Constable  
Lovepreet Singh 873, Lady Constable Ninder Kaur 1029 on*

*government vehicle no.P?B-13BA-1834 being driven by ASI Daya Singh 713 in connection with patrolling and checking of suspected persons were present near Gurughar Bus Stand, Hamidi then time was about 01:45 PM. Then secret information gave information to me secretly that Jaspal Singh son of Harjit Singh resident of Dharamkot, Gurmukh Singh son of Lakhvir Singh, Rinku son of Ujagar Singh, residents of Bhinder Kalan, Raghu Kabaria and Ravi Kabaria residents of Dharamkot have formed a gang of their own who are stealing vehicles and doing business of selling intoxicant on their vehicle Bolero Camper white colour bearing No.PB-30N-4465. Today also they has been seen while selling intoxicant at Amla Singh Wala Drain. If their search be conducted at drain then can be apprehended red handed. I alongwith fellow companions reached at Bridge drain Amla Singh Wala on finding the information solid and reliable then time was about 02:10 PM that above numbered car was parked on the road under the tree placed on path at right side towards the Amla Singh Wala drain at 20 meter away. The vehicle was facing towards the road and there were three young boys were searching the transparent polythene bag placed on bonnet. On seeing the vehicle of police party slow down tried to ran after leaving the polythene bag on the bonnet of the car and three young persons apprehended by the help of fellow companions and asked their name and address then first young boy disclosed his name as Jaspal Singh son of Harjit Singh, resident of Dharamkot, second young boy disclosed his name Gurmukh Singh son of Lakhvir Singh and third young boy disclosed his name as Rinku son of Ujagar Singh residents of Bhinder Kalan. Then I tried to join public witness from nearby and asked the passerby to join as witness but everyone by disclosing their helplessness left the spot. Therefore no one made as witness. Then I introduced myself to apprehended Jaspal Singh above that "I am Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform*

*as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Jaspal Singh above told me that I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen. On which notice under section 50 of NDPS Act and consent memo of Jaspal Singh above was prepared. Accused and witnesses put their signatures. Then I introduced myself to apprehend Rinku above that I Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwai as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Rinku above told me that I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen. On which*

*notice under section 50 of NDPS Act and consent memo of Rinku above was prepared. Accused and witnesses put their signatures. Then I introduced myself to apprehend Gurmukh Singh above that I Sukhwinder Singh SHO of Punjab Police and posted at Police Station Thulliwal as Station House Officer, I am wearing the uniform as per my rank and name plate in my name affixed. I have clearly seen the intoxicant substance heroin in the open mouth transparent polythene bag left by you on the bonnet of the car. I want to search the vehicle in your possession and to take the transparent polythene bag of intoxicant powder heroin in police possession by checking it. But you have legal right that if you want to get search of the transparent polythene bag of intoxicant substance heroin and take possession in the police and search of car from any Gazetted Officer or Magistrate Sahib then I can call one officer at the spot out of them or to take you before them. On which Gurmukh Singh above told me that I have listened and understand to you and I want to get conduct the search of car from you and to hand over the opened mouth transparent polythene bag left by me on the bonnet from which intoxicant substance heroin is clearly seen. On which notice under section 50 of NDPS Act and consent memo of Gurmukh Singh above was prepared. Accused and witnesses put their signatures. Then I SI/ SHO checked the opened mouth transparent polythene bag seen left at the bonnet of the car by Jaspal Singh, Rinku and Gurmukh Singh from which intoxicant substance heroin is clearly, on checking and weighing 290 grams of intoxicant substance heroin alongwith bag was found. Parcel of above recovered intoxicant substance heroin was prepared. Then I SI/ SHO sealed the above parcel with my seal bearing SS and sample seal was prepared separately. Then I SI/SHO conducted the search of above vehicle from which no illegal item and documents regarding ownership was found. Seal after use was handed over to SI Jagtar Singh 930. Then I SI/SHO taken the above sealed parcel sealed alongwith sample seal and above*

vehicle into police possession vide separate recovery memo. Then 1 SI/ SHO inspected the spot and prepared the site plan separately. Then 1 SI/ SHO arrested the accused in above FIR prepared the arrest memo separately. On which accused and witnesses put their signatures. Then I SI/SHO conducted the personal search of Jaspal Singh, Gurmukh Singh and Rinku above then from the right pocket of wearing pant of Jaspal Singh one white colour keypad mobile phone mark Samsung and currency notes of 300, from the left pocket of wearing lower of Gurmukh Singh one black coloured keypad mobile phone marka ITEL and currency notes of Rs. 150/- and front pocket of wearing shirt of Rinku currency note of Rs.100/-were recovered, to whom taken into police possession vide separate personal search memo. Personal search memo prepared separately, on which accused and witnesses put their signatures. Jaspal Singh, Gurmukh Singh and Rinku above have committed the offence under section 21, 25/61/85 of NDPS Act by keeping intoxicant substance heroin in their possession and committed offence under section 379 of IPC for committing theft by forming gang. Therefore, ruqa is being sent to police station through Lady Constable Ninder Kaur 1029 for registration of FIR under abovesaid offences against above accused Jaspal Singh, Gurmukh Singh and Rinku. Number be intimated after registration of FIR. I SI/SHO alongwith fellow companions are busy in the investigation at the spot. Today at bridge drain Amla Singh Wala at 6 PM, Sd/-Sukhwinder Singh SI, Station House Officer, Police Station Thulliwal, dated: 15.03.2023., "On receiving ruqa FIR No.12 dated 15.03.2023 under sections 21, 25/61/85 of NDPS Act, 379 of IPC Police Station Thulliwal against Jaspal Singh son of Harjit Singh resident of Dharamkot, Gurmukh Singh son of Lakhvir Singh, Rinku Singh son of Ujagar Singh resident of Bhinder Kalan, Raghu Kabadia and Ravi Kabadia resident of Dharamkot is entered in CCTNS. Record is submitted. Copy of FIR's is being sent in the service of Illaqa Magistrate and Officers. Original ruqa alongwith

*copy of FIR is being sent to SI Sukhwinder Singh 281/ Barnala Station House Officer, Police Station Thulliwai through Lady Constable Ninder Kaur 1029/Barnala. Control room be intimated.”*

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioner contends that the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused Jaspal Singh, Gurmukh Singh and Rinku Singh, from whose possession the alleged contraband i.e. 290 grams of heroin was recovered. He further contends that nothing has been recovered from the possession of the petitioner as whatever recovery was effected that was from co-accused persons namely Jaspal Singh Gurmukh Singh and Rinku Singh. It has been contended on behalf of the petitioner that he is in custody since 05.09.2024 and investigation in the present FIR is complete, wherein challan stands presented to Court on 25.11.2024, charges are yet to be framed and total 05 prosecution witnesses are yet to be examined, meaning thereby, the conclusion of the trial will take considerably long time.

**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 two other cases but could not produce any link between the alleged recovery and the petitioner.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 07 months and 19 days added with the facts that the

petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused Jaspal Singh, Gurmukh Singh and Rinku Singh, from whose possession the alleged contraband i.e. 290 grams of heroin was recovered; nothing has been recovered from the possession of the petitioner as whatever recovery was effected that was from co-accused persons; investigation is complete, wherein challan stands presented to Court on 25.11.2024, charges are yet to be framed and total 05 prosecution witnesses are yet to be examined, 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.

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 Nimesh 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

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.

**(SANDEEP MOUDGIL)**  
**JUDGE**

**25.04.2025**

*Anuradha/Poonam Negi*

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*