

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29952-2025
Date of Decision:02.07.2025

MALKEET SINGH

...Petitioner

Vs.

STATE OF HARYANA

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajnish K. Gupta, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J. (Oral)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023, for granting the regular bail in case FIR No.0145 dated 27.05.2024 under Section 22 (C), 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Guhla, District Kaithal (Haryana).

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

“To the SHO P.S. Guhia. Jai Hind. Today, I, SI Joginder Singh alongwith SI Balraj Singh No. 120/Kaithal, ASI Manjeet Singh No.85/Kaithal, HC Sanjeev Kumar No.827/Kaithal and L/EHC Pakwinder Kaur No.107/Kaithal in Government vehicle No.HR-08-GV-6907, driver of which was EHC Manoj Kumar No.814, while patrolling to prevent crime, while passing through town Cheeka, Village Guhla, Duserpur, Chanchak, Khedi Daban, reached near turn of Village Sinhu Majra, Daban Kheri, where a person coming on foot from the village signalled our car to stop, so I asked the driver to stop the car. Said person came to me and informed that Malkit Singh son of Mahender Singh, resident Village Sinhu Majra has been doing the work of selling

prohibited narcotic pills to customers while roaming around his house for a long time, who in now going to take prohibited narcotic pille from his house and go somewhere to sell to customer. If his house is raided immediately. Malkit Singh can be apprehended alongwith the above mentioned intoxicant prohibited pills. Since the information was from a trustworthy social person, I prepared the information SO under Section 42 of NDPS Act and sent L/EHC Pakvindra Kaur No.107 to P.S. Guhla for information and sent a copy of which to Deputy Superintendent of Police, Guhla for information. Then I told the secret information to passerby Hansa Singh son of Arjan Singh and Bhagwant Singh son of Mangal Singh, residents of Village Sinhu Majra and asked them to join the raiding party, but they left the spot by expressing their respective compulsions. Then I, alongwith my accompanying officials moved towards the place disclosed by the special informer. After reaching the backside of the Gali, adjoining to the Gurudwara in the village, the special informer stopped our car and told me that there is a white colour iron gate on the right side of the Gali, which is the house of Malkit Singh. After discinsing this fact, special informer left the spot. Then we parked the car outside the house with white colour gate and after getting down from the car, opened the white colour gate of the house and moved inside the house. From inside the gate of the house, person came with a cream colour bag in his left hand. On seeing the police party. he started walking swiftly towards the small gate situated towards the eastern side of the courtyard of the house. I overpowered that person at about 4-5 steps from the gate and asked about his name and address. The person disclosed his name as Malkit Singh son of Mahender Singh son of Karnail Singh, resident of Village Sinhu Majra, P.S. Guhla. Then informed the above mentioned person Malkit Singh through notice under Section 50 of NDPS Act that "I have suspicion of having prohibited intoxicant pills in the cream colour bag carrying in your left hand. Therefore, it is necessary to search the cream colour bag in your left hand and your house. But under the NDPS Act 1985, you have the legal right to get the search of cream colour bag in your hand and your house frondeatted officer any Magistrate, prepared notice inder daction 30 MUPS of act and read over and explained the contents of above to said person Malkit Singh The said pereon Malkit singh and witness St Balraj Singh No.120, HC Sanjeev Kumar No.827 appended their respective signatures on notice under Section 50 of NDPS Act. Then the apprehended person Malkit Singh, after thinking for some time, gave his consent to me and said that "I want to get myself and my house searched in front of a Gazetted Officer". I prepared the consent notice under



Section 50 of NDPS Act and read over and explained the above apprehended person Malkit Singh. to Then the the consent notice under Section 50 of NDPS Act was signed by the apprehended person Malkit Singh and witnesses SI Balraj Singh No.120, HC Sanjeev Kumar No.827. Then at 03.50 PM, I contacted Sh. Umed Singh, HPS, Deputy Superintendent of Police, Headquarters, Kaithal (Gazetted Officer) on his mobile No.90530-52102 from my mobile No.94162-92020 and informed him about the facts and requested to come up at the spot. Then at 03.53 PM. I contacted ah. Chetan Verma, Drug Controller officer, Kaithal on his mobile No. 90349-40384 from my mobile No.82218-30700 and informed him about the facts and requested to come up at spot. After that at 05.40 PM. Sh. Umed Singh, HPS. Deputy Superintendent of Police, Headquarters, Kaithal (Gazetted Officer came up at the spot in his Government car No. HR-08-GV-2000 mark Scorpio and Sh. Chetan Verma, Drug Controller Officer, Kaithal came up at the spot in his private car No.Hr-07-AD-7908 mark Swift Dzire. Then I verbally told the detail of the case to DSP and produced before him the apprehended person Malkit Singh and witnesses SI Balraj Singh No.120, HC Sanjeev Kumar No.827 and notice under Section 50 of NDPS Act and consent notice under Section 50 of NDPS Act. DSP conducted enquiry on the person Malkit Singh and SI Balraj Singh No.120, HC Sanjeev Kumar No.827 one by one. After enquiry, DSP marked the notice under Section 50 of NDPS Act and consent notice under Section 50 of NDPS Act as 'SEEN'. Then DSP got my physical search done from HC Sanjeev Kumar No.827. But no objectionable item was found from I prepared the list of personal search of Investigating Officer separately. Witnessen 31 Balraj Singh No. 120, HC Sanjeev Kumar No.827 put their respective signatures on the list of personal search of Investigating Officer. Then DSP attested the list of personal search of Investigating Officer. On the spot, telling the details to passersby near after the Gurudwara. I requested them to join the police proceeding, but all of them left the spot by expressing their respective compulsions. Then, as per the orders of DSP, search of the person apprehended Malkit Singh was conducted in the presence of DSP and checked the cream colour bag carrying in his left hand. It was printed on the bag in English as 'A PRODUCT OF SONI SONI ZOOM SHOES, the authentic shoe'. Inside the bag, there were orange colour pills. Then I conducted personal search of the apprehended person Malkit Singh and his house. During search, apart from the narcotic pills found in the cream colour bag carrying in the left hand of Malkit Singh, no other narcotic pills were found. I placed the bag on the ground and placed all the strips of



narcotic tablets on top of the bag and on counting. total 168 strips were found. On checking, there were 10 tablets inside in each strip and all the strips contain Alprazolam Tablets IP 0.5 mg ALPRASAPE-0.5 B.No.061223-BG189, MFG. Date Dec. 2023. Expiry Date Nov. 2026, MRP R8.27.20 per 10 Tabs. including taxes, manufactured all in India by Biogenetic Drugs Pvt. Ltd. Village Jharmazi, Baddi 174103, District Solan, H.P. Regarding the prohibited drug pills recovered from the possession of apprehended person Malkit Singh, Sh. Chetan Verma, Drug Controller Officer, Kaithal told that "Alprazolam comes under the category of NDPS at S.No.178 of NDPS Act, 1985, small quantity is 5 gm and commercial quantity is 100 gm. In this regard, Drug Controller Officer, Kaithal submitted his written report on a separate application, which was taken on record. DSP ordered me to weigh 10 tablets of one strip. In front of DSP, I took out 10 pills from a strip and weighed them with an electronic weighing scale and the weight of 10 pills was 1.15 grams. In this way, 168 strips were obtained total 1680 tablets and the total weight was 193.2 grams Then I put 10 pills back in the same strips from where I had taken out and pasted the transparent tape on the back of the strip. Then I put 168 strips of pills back in the same cream colour bag and put the bag in a white colour cloth bag. sealed the mouth of the bag with a needle and thread. Accordingly, prepared a parcel and sealed it with my silver metal seal impression JS/2. A sample seal was prepared separately on white cloth and also sealed with impression JS/2. Then I handed over the seal to HC Sanjeev Kumar No.827. Then DSP affixed his 1-1 seal of brass metal on the parcel and on sample seal with impression 'AK'. DSP kept the seal with himself. DSP attested the parcel of prohibited contraband pills bearing seal 'JS/2AK/1', sample seal bearing seal 'JS/2AK/1'. Then I took possession of the parcel containing prohibited contraband pills total 1680 weighing 193.2 grams bearing seal impression 'JS/2AK/1', sample seal impression 'JS/2AK/1' vide separate seizure memo. The apprehended person Malkit Singh, witnesses SI Balraj Singh No.120, HC Sanjeev No 827 and sh. Chetan Verma. Drug Controller Officer, Raithal put their respective signatures on the said case property seizure mettio. The case property *साक्ष* memo WAR attested by DSP. At around 07.30 PM, DSP and Drug Controller Officer, Kaithal after giving me appropriate instructions, left the spot in their respective vehicles. The apprehended person Malkit Singh has committed the offence under Section 22 (c) of NDPS Act, 1985 by keeping 1680 tablets weighing 193.2 grams of prohibited contraband tablets Alprazolam in his possession without any licence or permit. Upon which, after getting typed the ruga and taking out its printout, same is

being sent to P.S. Guhla by hand through ASI Manjeet Singh No.85/Kaithal for registration of FIR. After lodging FIR, number of which be informed. Special reports be sent through proper channel to concerned senior officers. Some another Investigating Officer be sent at the spot for further investigation of the case. I alongwith my accompanying officials, accused Malkit Singh, parcel of case property, am present at the spot waiting for the upcoming Investigating Officer, Place: Village Sinhu Majra. Sd/ Joginder Singh, SI, Narcotic Cell, Kaithal. Dated 27.05.2024 at 08.00 PM. On receiving of said ruga at police station, FIR No.145 dated 27.05.2024 under Section 22 (c) of NDPS Act, 1985 was registered at P.S. Guhla. Thereafter, copy of FIR alongwith original ruga and I. ASI being appointed as another investigating Officer alongwith EASI Bhupinder Singh No.831/Kaithal and the arrived ASI Manjeet Singh No.85/Kaithal am moving towards the place of occurrence. Copies of special reports of FIR are being sent to Magistrate via internet by mail ID of Superintendent of Police, Kaithal 'sp-ktl.pol@hry.gov.in and mail ID of Deputy Superintendent of Police, Guhla 'dspguhla-hry@nic.in'. Said FIR was registered in the presence of ASI Amit Kumar No.38/Kaithal.

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 and no recovery has been effected from him. He submits that the alleged recovery i.e. 168 strips of Alprazolam tablets weighing 193.2 grams has been effected from his house but it is only for his own consumption as he is suffering from depression. He further submits that the investigation in this case is complete as challan stands presented on 22.07.2024 charges stands framed on 06.08.2024 out of 17 prosecution witnesses, only 6 PWs have 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 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 recovery of 168 strips of Alprazolam tablets weighing 193.2 gms which falls under the ambit of commercial quantity has been recovered from his possession.

4. **Analysis**

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 01 year 01 month and 03 days; nothing has been recovered from the present petitioner, as 168 strips of Alprazolam tablets weighing 193.2 grams has been effected from his house but it is only for his own consumption as he is suffering from depression, challan stands presented on 22.07.2024 charges stands framed on 06.08.2024 out of 17 prosecution witnesses, only 6 PWs have been examined so far which is sufficient for this Court 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.

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***”, SLO (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 his 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**

02.07.2025

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