



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

266

CRM-M-31056-2025  
DATE OF DECISION: 04.07.2025

KULWINDER SINGH

...PETITIONER

Versus

UNION OF INDIA AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Sekhon, Advocate and  
Mr. R.S. Gill, Advocate for the petitioner(s).

Mr. Sourabh Goel, Advocate  
Special Public Prosecution with  
Ms. Samridhi Jain, Advocate for NCB.

Mr. Sandeep Singh, AAG, Punjab.

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SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 439 Cr.P.C. (Section 483 BNSS) for grant of regular bail to the petitioner in NCB Crime No. 18 dated 08.07.2023, registered under Section 8, 18, 25, 27-A, 29 and 60 of The Narcotic Drugs and Psychotropic Substances Act, 1985 at P.S. Narcotics Control Bureau Amritsar Zonal Unit having jurisdiction at District Bathinda.

2. The brief facts of the case are that on 08.07.2023, a team of NCB, Amritsar seized 03.860 kgs. Of opium from a Toyota Corolla Altis



Car bearing Registration No.HR-44-H-9628 and arrested two persons, namely, Rajesh Kumar Yadav son of Sita Ram Yadav and Kulwinder Singh son of Angrej Singh. A case bearing NCB Crime No.18/2023 dated 08.07.2023 under Sections 8, 18, 23, 25, 27-A, 29 and 60 of the NDPS Act, 1985 came to be registered.

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. It is his submission that the petitioner has been in custody for more than 1 year and 11 months and 20 days and the trial is moving at a very low speed as out of total 23 PWs, only 3 PWs have been examined so far. He submits that nothing has been recovered from conscious possession of the petitioner and whatever recovery i.e. 3.860 kg opium was effected from a vehicle which was driven by petitioner. Moreso, co-accused persons namely Rajesh Kumar Yadav has already been released on regular bail by this Court vide order dated 19.05.2025 passed in CRM-M 22349-2025 (Annexure P-4) 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 petitioner is a habitual offender as he is involved in other FIRs also and the recovery effected i.e. 3.860 kg opium falls within the ambit of



commercial in nature, moreover, the petitioner was arrested from the spot and was driving the offending vehicle.

### 3. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 11 months and 20 days, co-accused namely Rajesh Kumar Yadav has already been released on regular bail by this Court vide order dated 19.05.2025 passed in CRM-M 22349-2025 (Annexure P-4), nothing has been recovered from his conscious possession and trial is moving at a very slow speed as out of 23 PWs only 3 PWs have been examined so far and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, 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 offences. Yet another important facet of our criminal jurisprudence is 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 “**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.”*

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 the concession of bail.

#### 4. **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**

**04.07.2025**

*anuradha*

*Whether speaking/reasoned*      *Yes/No*

*Whether reportable*              *Yes/No*