

2025:PHHC:079229



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

**CRM-M-31285-2025
DECIDED ON: 04.07.2025**

MOHD. AFZAL SEIKH**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Vikramjeet Singh, Advocate for
Mr. Himanshu Joshi, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana

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

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 of BNSS, 2023 grant of regular bail in FIR No. 274 dated 06.06.2024 registered under Section 20(b)(ii)(C) of The Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Hodal, District Palwal, Haryana.

2. Facts

Facts as narrated in the FIR reads as under:-

“To, The SHO Sahib, Police Station Hodal, Jai Hind. Today, I ASI alongwith HC Sandar Singh 74/Palwal, HC Sandeep 924/Palwal, Constable Amit 747/Palwal in the government vehicle being driven by C. Parveen 415/Palwal were present at Karman Border Hodal for patrolling and investigation of crime that a secret informer me and informed that Shamsher Singh son of Mohan Singh resident of Chokra, District Mathura and Pardeep son of Rameshwar resident of Partap Nagar, Yamuna Par Mathura, District Mathura, UP and Ajman son of Mohammad Ismail Sekh resident of Joshwari West Mumbai sell intoxicant substance (Charas) and supply the same.

Today, they bring intoxicant substance (Charas) in heavy quantity from Himachal Pradesh in their black colour Scorpio vehicle bearing No. UP-85-CC-9936 and will go towards Mathura, UP. If the barricades are installed at Ujina Drain NH-19 then the abovesaid persons alongwith Sulfa Charas in abovesaid vehicle can be apprehended. The informer is believable person, the fellow employees were informed and notice under Section 42 NDPS was prepared and the information was sent to Police Station Hodal for registration through C. Amit 747/Palwal and I ASI alongwith fellow employee reached at Ujina Drain NH-19 and barricades were installed. The passerby at the Naka were staopped and asked to become the witness but all showed their compulsion and went away. After sometime, one black colour Scorpio vehicle seen coming from Hodal Palwal side, I ASI pointed to stop the Scorpio Vehicle. The driver of Scorpio vehicle stopped the vehicle on around 10/15 walking distance from me ASI and tried to turn. I ASI with the help of fellow employee apprehended the driver and two other persons sitting in the Scorpio Vehicle and got marked on the side of the road and on seeing the Scorpio Vehicle from front and back the number was found UP-85-CC-9936. The person sitting on the driver seat was asked his name then his told his name as Shamsher Singh son of Mohar. Singh resident of Chokda Police Station Mant, Jamuna Bihar Colony Yamuna Par Mathura and the persons sitting on the front seat with driver told his name as Pardeep son of Rameshwar Parsad resident of Partap Nagar, Yamuna Par, Mathura, District Mathura, UP and the persons sitting on the middle sear told his name and address as Afjal son : of Mohammad Ismail Shekh resident of 33/304, Samim CHS Next to RTO 4 Buglov, Andheri West, Mumbai, Azad Nagar, Mumbai. I ASI asked the aforesaid persons that I have suspicion of having intoxicant substance with you and your vehicle Scorpio No. U 85-CC-9936, you and your vehicle is to be searched. You have legal right that you can get conduct you and your vehicle search in front of some Gezatted Officer or Magistrate then the Gazetted Officer or Magistrate can be called at the spot or you can be taken before him. I ASI separately prepared notice under Section 50 of NDPS Act to abovesaid three persons. The abovesaid three persons gave written opinion on the notice to get them and their search before the Gazetted Officer. I ASI called to Nodal Officer Sh. Kuldeep Singh HPS Deputy Superintendent of Police Hodal appointed by Deputy Commissioner Palwal on his mobile No.8930202023 from my mobile No.8368836593 and informed to reach at the spot, who asked that I am coming after sometime and after some time C. Amit 747/Palwal reached at the spot and a copy of the Rapat No.24 was got registered at Police Station and handed over to me ASI and after waiting for some time, Nodal Officer Sh. Kuldeep Singh HPS Deputy Commissioner reached at the spot and after

coming the Nodal Officer at spot, he was informed with notice under Section 50 NDPS Act and met with the abovesaid persons and Nodal Officer Sh. Kuldeep Singh HPS attested the notice under Section 42 NDPS Act and after search me ASI by Nodal Officer Sh. Kuldeep Singh HPS ordered me ASI to get conduct the search that the aforesaid persons and vehicle be searched. I ASI searched them one by one and searched the abovesaid Scorpio then total 06 plastic wrapped in white tape were found in the sunroof of the Scorpio vehicle. The black Pinni in all six packet were taken out then every Pinni contains 5-5 packet and Sulfa (Charas) was recovered from total 30 packet plastic pinni which was found Charas by opening and smelling and seeing. The electronic weighing machine was arranged on the spot and was weighed then total weight of Sulfa Charas alongwith plastic pinni comes to 2.978 KG. One parcel of all 30 packets and separate parcel of empty black pinni was prepared. The parcels were stamped with me ASI with stamp MS/1 and Nodal Officer Sh. Kuldeep Singh HPS Deputy Superintendent of Police Hodal duly stamped the same. After using the stamp, I ASI handed over the stamp to HC Sandeep 924/Palwal and Nodal Officer kept his stamp with him. The recovered Sulfa Charas and black empty pinni plastic and vehicle Scorpio No. UP-85-CC-9936 black colour was taken in police possession by way of memo. The memo was signed by the accused and witnesses. The assailants Samsher, Pardeep and Afjal has committed offence under Section 20(b)(ii)C-61-85 NDPS Act by keeping Sulfa Charas in plastic pinni in their possession in the vehicle and the ruqa is being sent to the police station through C. Amit 747/Palwal for registration of case, inform with number after its registration and the special report of the case be sent to the Magistrate Sahib and Higher officials through special messenger and Incharge CIA Hodal has requested to appoint another investigating officer for further investigation. I ASI is buys in investigation on the spot. Today: Ujina Drain NH-19 Sd/- ASI Mahanand.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is contended that the alleged recovery of contraband, i.e., 2.978 kilograms of Sulfa (Charas), was not effected from the petitioner, but rather from the sunroof of the Scorpio vehicle in which the petitioner was merely traveling along with the co-accused. Counsel further

submits that the petitioner is neither the owner nor the driver of the said vehicle, and had only taken a lift from the co-accused. It is thus argued that the petitioner has no connection whatsoever with the owner or driver of the vehicle and has no nexus with the alleged recovery.

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 27 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that recovery of contraband i.e., 2.978 kilograms of Sulfa (Charas) 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 is neither the owner nor was driving the offending vehicle and was instead co-passenger without having knowledge about the presence of the contraband; the petitioner has already suffered incarceration of 1 year, 27 days and is a person of clean antecedents, as is not involved in any other case and the fact that no incriminating material has been put forth by the State to connect the petitioner with the alleged contraband added with the fact that investigation is complete, challan stands presented on 02.09.2024 charges have been framed on 26.11.2024 and out of total 15 prosecution witnesses, only one has 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

04.07.2025
Meenu

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