



210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26541-2025
Date of Decision:02.07.2025

MAHINDRO

...Petitioner

Vs.

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ramnish Puri, Advocate for the petitioner.

Mr. Sandeep Singh, AAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No. 264 dated 04.11.2018 under Sections 22 and 29 of NDPS Act, 1985, registered at Police Station Moti Nagar, District Ludhiana.

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

“Ludhiana, Police Station, Moti Nagar, Jai Hind. Today I SI along with HC Vijay Kumar 776, CT Jaswant Singh No. 295, CT Ramandeep Singh 3944, P.S. Focal Point, Ludhiana was preset at T-Point, Ghora Colony. on a orders private of car No. PB-02CA7303 Senior officers, informer came Mohindro w/o resides at to where me and informed late Munna, Castre as per special me that Sainsi Ghora Colony, Transport Nagar, resides with her sons Rajan, daughter Pooja wife of Johnney and they with the help of each other by contributing money bring intoxicant substance, intoxicant tablets, intoxicant capsules, intoxicant injections outside and sell the same etc. from in their house and in case immediate raid is conducted at their house, Mohindro along with her



daughter Pooja and son Rajan may be apprehended along with heavy quantity of intoxicant substance, antotoxicant tablets, capsules and intoxicant Injections and heavy cash amount earned by selling intoxicants them. may be recovered Exom The special informer being reliable, the acts done by Mohindro, Pooja and Rajen aforesaid falls under Sectin 22/29-61-85 of NDPS act and in compliance to the orders of Hon'ble High Court, I circumstances to SI disclosed the Incharge Harjinder Singh SHO, P.s. Moti Nagar Ludhiana No. 78370-18623 at on his mobile about 4.15 PM from my mobile phone No. 78887-66187 and requested to sent the investigating officer and ruga for the registration Pooja and Raja, of case against Mohindro, was sent through HC Vijay Kumar 766, Ludhiana and after registration of FIR number of the same be intimated reports be issued and be sent Special to the Officers, Illaga magistrate. Control room be intimated through proceeding Point, Wireless. for information. Ghora Colony, I Today SI am At T-Transport Nagar, Ludhiana t u7.30 PM. Sd/ Jaswinder Singh SI 2164/BTL, P.S. Moti Nagar, Ludhiana dated 4.11.18.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present FIR on the basis of secret information and was arrested on 04.11.2018; she was earlier granted bail vide order dated 31.11.2018 and was continuously appearing in Court but on 25.09.2019 she could not appear in the Court and was ordered to be summoned through non-bailable warrants of arrest and later on declared proclaimed offender and was again arrested on 26.02.2024. He further submits that the petitioner was neither present at the spot nor any recovery has been effected from her.

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 by submitting that the petitioner had deliberately absented form the court proceedings and had been declared proclaimed offender.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year 05 months and 03 days for which the petitioner has suffered incarceration; the petitioner was nominated as an accused only on the basis of secret information and the recovered contraband was found to fall within the category of non-commercial quantity in addition to the fact that investigation is complete, challan stands presented to Court on 24.04.2019, charges have been framed on 03.08.2024 and total 13 prosecution witnesses have been cited and out of which only 02 have been examined, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 (Cr1.) 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. **DECISION:**

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*