



220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30000-2025

Date of Decision:02.07.2025

GURDEV SINGH

...Petitioner

Vs.

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jashandeep Singh Sandhu, 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.10, dated 24.04.2023, under Sections 21, 25, 29 of N.D.P.S. Act 1985 Registered at Police station State Special Operation Cell Amritsar (District Intelligence Wing (CID)) District Amritsar Punjab.

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

“Station House officer, P.S. State Special Operation Cell, Amritsar, Jai Hind. Today I St alongwith ASI Jagjit Singh 5/72, C-1 Gurbir Singh 5/2016, CT-Malkeet Singh 80/491, CT Harpal Singh 5/675 were going in search of bad elements and were present near village Tapiyala PS Lopoke Distt. Amritsar when the informer came to me and informed me that Gurlal Singh son of Jasbir Singh rio Bachiwind P.S. Lopoke Distt. Amritsar and Gurdev Singh son of Harjinder Singh r/o Kakkar Kalan P.S. Lopoke Distt. Amritsar are very active in selling the heroine and they have got close links with the Pakistan Smugglers and they with friends their formed have an international heroine



smuggling gang. The informer informed that last night Gurlal Singh and Gurdev Singh had received a huge consignment of heroine from Pakistan through Drone near village Kakkar and today they are going on their motor cycle Hero Honda Splender No.PB 14B 7108 Black Colour to supply the same to some party near Verka Booth Plant Lopoke, if nakabandi is done then Gurlal Singh and Gurdev Singh can be apprehended with the heroine. The information is reliable. I ASI Immediately brought this to the notice of officials and team the of Inspector Inderdeep Singh along with SI Parminder Singh 5168/Int, SI Bhupinder Singh 2958/Int, ASI Satnam Singh 5/115, ASI Talwinder Singh 9/40, HC Avtar Singh 7/8, HC Bakshish Singh 75/830, HC Harpal Singh 9/745, HC Jeon Singh 9/07, CT Jagjit Singh 9/696, CT Shamsher Singh 80/1023, CT Prabdeep Singh 9/688 is constituted and they in their Govt. Vehicles alongwith mobile computer van were already in the said area in search of bad elements and the information was given to them and the officials directed us to also reach on the spot alongwith the team. Therefor the act of Gurlal Singh son of Jasbir Singh r/o Bachiwind P.S. Lopoke Distt. Amritsar and Gurdev Singh son of Harjinder Singh r/o Kakkar P.S. Lopoke Dist. Amritsar falls under Sections 21/25/29 of NDPS Act, that's why ruqa is being sent through CT Malkeet Singh 80/491 to PS SSOC Amritsar for registration of the case and the number of the case be intimated after registering the same. Special reports be issued, control room be informed, I SI alongwith ASI Jagjit Singh 5/72, C-1 Gurbir Singh 5/2016, CT Harpal Singh 5/675 are leaving for the spot, in the area near Maur pind Tapiala, area police station Lapoke District Amritsar.

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present FIR. He further submits that no recovery has been made from the conscious possession of the petitioner. He further submits that the petitioner is in custody since 24.04.2023.



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 4 kgs of Heroin has been got recovered from the conscious possession of the accused persons i.e. Gurdev Singh and co-accused Gurlal Singh

4. **Analysis**

Be that as it may, considering the custody period i.e. 02 years 02 months and 04 days in addition to the fact that the alleged contraband has not been recovered from the conscious possession of the petitioner wherein investigation is complete, challan stands presented to Court on 17.10.2023, charges have been framed on 23.11.2023 and total 17 prosecution witnesses have been cited out of which only 01 has 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***”, 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



concession of bail.

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