



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

226

CRM-M-25251-2025
DATE OF DECISION: 14.05.2025

SHIV DARSHAN UPADHYAY

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Kudrat Sareen, Advocate for the petitioner(s).

Mr. Rajiv Verma, Sr. DAG, Punjab.

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

This petition has been filed under Section 483 BNSS 2023 for granting Regular Bail in FIR No. 0079 dated 05.10.2023 U/s 22 and 29 of NDPS Act, P.S. Kathgarh, District Shaheed Bhagat Singh Nagar, Punjab (P-1).

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘SHO, PS Kathgarh, Jai Hind, Today me, SI along with S/Ct Rahul Kumar No 1071/SBSN were patrolling in government vehicle bearing registration No PB-32P-4442 along with Laptop and investigating kit for checking of suspicious persons and reached at High-tech Naka at Asron where at High-Tech Naka ASI Kamaljit Singh No 141/SBSN, ASI Gurmel Ram No 1184/SBSN, ASI Balwant Singh 1 No 322/SBSN, ASI Nirpal Singh No



401/SBSN & ASI Chandan Kumar No 578/SBSN were already present at Naka. Me ASI along with co-staff started checking the vehicles and busses which were coming from Chandigarh, Ropar to Balachaur side. Half an hour was passed while checking the vehicle, vehicles were standing in a row time will be around 12: 20 PM. Then saw a person who was holding one black coloured bag on his right shoulder and one heavy weight black colour bag in his left hand, dismounted from one of the vehicle and was walking towards Ropar side, who was at the distance of about 70 mtrs from me. Then me SI give him call to stop then he started walking speedily, who was apprehended by me with the help of co-staff on the basis of suspicion and asked his name and address who told his name as Ajay Pal Singh son of Ram Pal resident of village Badh Bagani, PS Gonda, District Aligarh (U.P). Before checking his bags tried to include the public witness in the police party about 04-05 persons were tried but everyone expressed their own problem to join the police party. Then me SI in presence of co-staff checked the bag held in his right hand and found Dicyclomine HCL, Tramadol HCL & Acetaminophen Capsules. The bag held on the right shoulder was checked and found Dicyclomine HCL, Tramadol HCL & Acetaminophen Capsules. The capsules contained in the bag held in his right hand was counted and found 720 strips each strip containing 08 Capsules i.e. total 5760 capsules and patch No of each strip was erased with sketch pen, and a parcel was prepared and marked as 01. Capsules contained in the other bag of Ajay Pal Singh were counted and found 1080 strips each strip containing 08 Capsules i.e. total 8640 capsules and patch No of each strip was erased with sketch pen, and a parcel was prepared and marked as 02. Recovered both the parcel were stamp with my stamp word HS and three copies of sample stamp with words HS were prepared and handed over to ASI Nirpal Singh No 401/SBSN. Case property both the parcels containing Dicyclomine HCL, Tramadol HCL & Acetaminophen Capsules stamped with stamp HS & sample stamp word HS three coples were taken into custody as proof. Ajay Pal Singh aforesaid could not produce any license for keeping Dicyclomine HCL,



Tramadol HCL & Acetaminophen Capsules total 1800 strips containing total 14,400 capsules in his possession. Ajay Pal Singh son of Ram Pal resident of village Badh Bagani, PS Gonda, District Aligarh (U.P) has committed offence under section 22-61-185 NDPS Act while keeping Dicyclomine HCL, Tramadol HCL & Acetaminophen Capsules total 1800 strips containing total 14,400 capsules in his possession. Ruka has been written and sent through ASI Kamaljit Singh 141/SBSN to PS Kathgarh and separate report under section 42 of NDPS was prepared and sent to Illqua Officer Sub Division Balachaur. FIR number be informed after registering the same. Special report to be prepared and control room be informed. Sd/- xxx SI Harjinder Singh, Incharge Police Post Asron, PS Kathgarh dated 05.10.2023.'

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. She submits that the instant FIR was registered against co-accused Ajay Pal Singh who was found in possession of contraband i.e. 1800 strips containing 14400 capsules of Dicyclomine HC, Tramadol HCL and Acetaminophen Capsules and the petitioner was subsequently named on the basis of the disclosure statement made by Ajay Pal Singh. She has argued that there is no direct evidence or recovery to connect the petitioner with the alleged offence. She contends that nothing has been recovered from the present petitioner. She has further argued that the antecedents of the petitioner are clean. She urges that similarly situated co-accused namely Pawan Kumar has already been granted concession of regular bail by this Court vide order dated 29.04.2025 passed in CRM-M-6827-2025 (Annexure P-1). Moreso, the investigation in this case is complete as challan stands



presented on 30.03.2024 charges stands framed on 19.04.2024 out of 21 prosecution witnesses, 8 PWs have given up and only 4 PWs have been examined so far and 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 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 recovery i.e. 1800 strips containing 14400 capsules of Dicyclomine HC, Tramadol HCL and Acetaminophen Capsules is commercial in nature, however, is not in a position to controvert the fact that co-accused has already been granted concession of regular bail.

4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 7 months and 2 days; the petitioner was named on the basis of disclosure statement, nothing has been recovered from him, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, co-accused has already been granted concession of regular bail, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 30.03.2024 charges stands framed on 19.04.2024 out of 21 prosecution witnesses, 8 PWs have given up, only 4 PWs have been examined so far which is sufficient 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**”, **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 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**

14.05.2025
anuradha

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