

2025:PHHC:039133



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

**CRM-M-14330-2025
DECIDED ON: 21.03.2025**

PARGAT SINGH ALIAS KUDDA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Amarjot Sangha, Advocate
for the petitioner. (through Hybrid Mode).

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court under Section 483 of the BNSS, 2023 for grant of regular bail to the petitioner in case FIR NO. 10 dated 30.01.2023 Under Section 22 of NDPS Act, P.S. Mulepur, District Fatehgarh Sahib.

2. Facts

Facts as narrated in the FIR read as under:-

“Nakal Rukka Chief Officer Police Station Mulepur, Jai Hind, Today I/SI along with ASI Man Singh No843, ASI Kirtan Singh No 164 , C. Sipahi Kulwinder Singh No 720, PHG Salmadin No 259 along with laptop printer was present on government Balero Number PB-23T-3154 were patrolling area on Bahad Bridge, Sua Nalini to check bad elements. Then around 11.30 am, from Bus

Stand Roorkee side, a hair cut young fellow on foot was seen. In his right hand a waxy black polythene plastic heavy was seen. He panicked on seeing the police party and started to turn back. I/SI along with the other police party overpowered him and asked him his name and address. On being asked he said his name is Pargat Singh/ Kudda, son of Balveer Singh, Resident of village Roorkee, Thana Mulepur, Fatehgarh Sahib. On this I/SI told him his name, and designation the same of others with him were told. I/SI told him I have suspicion on you that you are carrying intoxicating substances in the waxy black polythene held in your right hand. I want to search you but you have the right that you can get the search conducted by the Magistrate or Gazetted officer who can be called on the spot or you can be taken to him. Then Pargat Singh on knowing his rights gave this a thought and said that you can do the search. As per Section 50 of the NDPS Act Notice was given on the spot on which Pargat Singh put his left thumb impression and ASI Man Singh and ASI Kirtan Singh signed as witness. Then I/SI told Pargat Singh that he could take search of me and the police party before giving the search of his polythene bag. He thought about it and said that you are police officers and I have faith on you and you can search the polythene. On which he put his left thumb impression on Fard sehmati talasi police party'. ASI Man Singh and Kirtan Singh as witnesses. Then I/SI ASI tried to get some private witnesses to join the police party no one agreed to be a witness as every one expressed their own compulsions and kept leaving from the spot. Then the polythene which was held in right hand was opened and checked and it was found 126 leaves of Dicyclomine HCL, Tramadol HCL, Acetaminophen capsules Pyeevon Spas Plus were found. In each leave 8/8 total 1008 intoxicating capsules were found. On each leave B.No. LYEC-120 MFG 07/2021 Exp 06/2023 was written. On being asked Pargat Singh @Kuda could not produce any bill or permit. The capsules were put back in black waxy polythene and a parcel was prepared. On the parcel I/SI put seal JS and

then he prepared sample separately. Then the seal stamp was handed over to ASI Kirtan Singh. The police took both in their possession under 'fard baramdgi' on which the left thumb impression of Pargat Singh was taken and ASI Man Singh and ASI Kirtan Singh attested as witnesses. The Pargat Singh @ Kuda by keeping the 126 leaves of Pyeevon Spas Plus have committed offence under section 22-61-85 NDPS Act. At this a rukka/writing is being sent to the police station through HC Salamudin no 259 for registration of the case. After registration of the case the number be informed. Officers and control room and wireless message to be given. I SI along with others are investigating. - Bahad Bridge, sua Nalini, time 12.45 pm”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and the alleged recovery from the petitioner is a result of a purported “chance recovery” of 1008 capsules of Pyeevon Spas Tablets, wherein total alleged recovery of tramadol salt amounts to only 50.4 grams, which is non-commercial in nature. He further submits that the petitioner is in custody since 31.01.2023, wherein after framing of charges on 22.08.2023 only 2 prosecution witnesses have been examined so far out of the total 12.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that the petitioner is a habitual offender, as he is involved in other cases as well.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 2 years, 1 month and 19 days, wherein investigation is complete, challan stands presented on 12.07.2023, charges have been framed on 22.08.2023 and out of total 12 prosecution witnesses, only two have been examined so far, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars, it is a fundamental postulate of law that “*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 “**Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the concession of bail.

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

21.03.2025

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>