IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 **CRM-M-25485-2025**
Date of Decision:05.08.2025

DEESHO @ DISHO **.....PETITIONER**

VERSUS

STATE OF PUNJAB **.....RESPONDENT**

CORAM: HON'BLE MR JUSTICE SANDEEP MOUDGIL

Present: Mr. Ishan Gupta, Advocate and
Ms. Deepali Singal, Advocate
for the petitioner.

Mr. Rajiv Verma. Sr. DAG, Punjab.

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SANDEEP MOUDGIL, J. (ORAL)

1. Prayer

The jurisdiction of this Court under Section 483 of the BNSS has been invoked seeking regular bail to the petitioner in case FIR No. 31, dated 24.02.2025, under Sections 22 of NDPS Act 1985, registered at Police Station Kartarpur, Jalandhar.

2. Contentions:

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and that the alleged recovery of 35 intoxicating tablets of black polythene bag was recovered from possession of the petitioner. Learned counsel further submits that the investigation has been completed, the challan has already been filed before the competent court, and there is no further recovery to be made from the petitioner. Hence, it is argued that no useful purpose would be served by

continued incarceration of the petitioner.

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 05 months and 10 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the alleged recovery effected from the petitioner falls under the definition of commercial quantity.

3. **Analysis**

In the present case, 35 intoxicating tablets containing salt etizolam were recovered from black polythene bag and petitioner has already suffered incarceration of 05 months and 10 days and is not involved in any other case, meaning thereby she is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 29.04.2025, charges were framed on 07.05.2025 and out of total 14 prosecution witnesses, none has been examined. This Court is sanguine of the fact that conclusion of trial shall take considerable time, therefore, this Court is of the view that 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.*
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> *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.*
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> *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."

4. **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.

List on 08.08.2025 for further consideration.

To be heard along with CRM-M-38810-2025.

(SANDEEP MOUDGIL)
JUDGE

05.08.2025
pry

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