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

**CRM-M-39004-2024**
**Date of Decision: August 23, 2024**

**JAGSIR KHAN ALIAS LAADI**

**…...Petitioner(s)**

**V/S**

**STATE OF PUNJAB**

**…...Respondent(s)**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Mohit Kumar, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

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

**1. Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.34, dated 05.04.2021, under Sections 302, 148, 149, IPC (Section 34 IPC added later on), registered at Police Station Sadar Ahmedgarh, District Sangrur.

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

> *"Statement of Kashmiro Wife of Late Joginder Singh Resident of Matoi, Age about 30 years, Mobile no-99157-08650 to SI/SHO Amandeep Kaur 32/JRT Police station Ahmedgarh lodged an FIR against Surjit Singh Son of Balkar Singh, Sethi son of Surjit Singh Sukho Wife of Surjit Singh, Meet, Gurmeet Son ofBalkar Singh, Pinky*

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*wife of Meet Singh, resident of Matoi, Sehbnaz son of Dara, Resident of Rodiwal. Laddi Son of Naiti, Resident of Chuhanke as a tenant in Matoi Under Section 302,148,149 of IPC Police station SadarAhmedgarh, through of PHG Jagtar / Statemer Singh 48313 which is contended as, Statement of Kashmiro Wife of Late Joginder Singh Resident of Matoi, Age about 30 years, Mobile no- 99157- 08650" that i am the resdidentof the above mentioned address and working as labour. On dated 2.04.2021 my husband has left the home for his work on 9.00 AM. and was going to Malerkotlaby taking a lift from passerby and sat on his bike. That at some distance near the flour mill at the Malerkotla road of our village one Sukho wife of Surjit Singh of our village stopped the motorcycle by raising her hand and took off my husband Joginder Singh from the Motorcycle. That afterwards at that time Surjit Singh Son of Balkar Singh, Sethi son of Surjit Singh reached at the spot and gave beatings to my husband. That these three persons took my husband Joginder Singh to the house of Surjit Singh. In the house of Surjit Singh, Meet Son Q 5 6 of Balkar Singh, Pinky wife of Meet Singh, Gurmeet Singh son of Balkar Singh, resident of Matoi, Laddi Son of Naiti, Resident of Chuhanke as a tenant in Resident of Matoi, Sehbnaz son of Dara Khan, Resident of Rodiwal were already present there and all of them beated my husband with Danda and Sticks and caused injuries on his body with intention to kill him. That my husband reached at our house told me about this incident. That on 03.04.2021 I took my husband Joginder Singh to the nearest civil Hospital Ahmedgarh at about 5:00 PM, due to several injures the Civil hospital Referred my Husband to the Civil Hospital Malerkotla, where he was under treatment. That with the intention to kill my husband Joginder*

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*Singh, all the above mentioned persons had beated my husband with Danda and Sticks and due to that my husband didn't bear the pain of injuries and died on 04.04.2021 at about 11/11:30PM. That the death of my husband had been caused due to the beating by Danda and Sticks by these following persons, Surjit Singh Son of Balkar Singh, Sethi son of Surjit Singh, Sukho wife of Surjit Singh, Meet, Gurmeet Son of Balkar Singh, Pinky wife of Meet Singh, resident of Matoi, Sehbnaz son of Dara Khan, Resident of Rodiwal, Laddi Son of Naiti, Resident of Chuhanke as a tenant in Matoi, with the intention to kill him. That I have met you with my brother-in-law Manjit Singh Son of Bir Singh at the gate of Civil Hospital Malerkotla and narrated my statement. Legal action may kindly be taken against them.I got recorded my statement which is correct."*

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the instant FIR and vague allegations have been levelled against him. The petitioner has not caused any injury and has not participated in any crime. He further contends that neither any injury has been attributed to him nor he is a party to any crime. Moreover, there is no eye witness to the alleged occurrence of the offence. The petitioner was arrested on 05.04.2021 and since then he has been in custody. Challan has already been presented and the conclusion of the trial will take time. It has been submitted on behalf of the petitioner that he is at parity with the other co-accused, namely, Mohd. Shehbaz @ Shehbaz, who has already been

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granted the concession of regular bail by this Court vide order dated 06.08.2024 passed in CRM-M-36503-2024 (Annexure P-3).

**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 the allegations against the petitioner are of serious nature and mere delay of 03 days in lodging the instant FIR itself is not a ground to grant the concession of bail.

4. **Analysis**

From the above case it can be culled out that the role attributed to the petitioner is that he by forming an unlawful assembly with his co-accused Surjit Singh and others armed with deadly weapons i.e. danda and sticks gave severe beatings to Joginder Singh (husband of the complainant) who succumbed to his injuries during treatment in Civil Hospital, Malerkotla, however, the said fact has been controverted by the learned counsel for the petitioner stating that the petitioner has not caused any injury and not participated in commissioning of the alleged offence, moreso, the petitioner has been behind the bars for last 03 years, 04 months and 07 days; also the petitioner is at parity with the other co-accused, namely, Mohd. Shehbaz @ Shehbaz, who has been granted the concession of regular bail by this Court vide order dated 06.08.2024 passed in CRM-M-36503-2024 (Annexure P-3), added to the fact that challan stands presented on 08.07.2021, charges having been framed on 12.08.2021 and out of total 18 prosecution witnesses, only 12 witnesses have been examined till date, which is sufficient enough for this Court to infer that the conclusion of trial

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will take a considerable amount of 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.*

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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*

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*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 the right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the

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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 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.

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**

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

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