



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-62174-2024  
DECIDED ON: 17.12.2024

SALIM .....PETITIONER

VERSUS

STATE OF HARYANA .....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohan Singh Rana, Advocate for the petitioner.  
Mr. Chetan Sharma, DAG, Haryana.

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.191, dated 09.11.2023, under Sections 323, 324, 458, 342, 326, 506 IPC and Section 25 of Arms Act, registered at Police Station Bajghera, Gurugram.

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

*“To, SHO PS Bajghera, Gurugram. Sir it is requested that I, Gudiya D/o Nasrudin am a resident of H. NO. 2093, behind Bala Patti Prakash Taxi, Hathas, Police Station Kotwali Hathras, District Hathras, UP and I have been living with my family on rent in Devender Kataria house in Shankar Vihar, Gali No. 1, Changa Phatak, Gurgaon for the last 3 years. Adjacent to my house, my uncle Chand S/O Roshan also lives with us on rent in Devender Kataria house at H. NO. 2093, behind Bala Patti Prakash Taxi, Hathas Police Station Kotwali Hathas, District Hathras, UP. That my uncle daughter Heena, who used to talk to a boy named Salim, my uncle*

*daughter Heena stopped talking to Salim. On 08/11/2023 at around 11 PM, Salim S/o Samim village Bada Pul, Nearby Mosque, Post Nagina, Police Station Bada Pul, District Bijnor, UP, currently residing as a tenant at E-48, Near Gurudwara Sai Kunj, New Palam Vihar, Gurgaon, suddenly came inside my and my sister Sazia rented room and he closed the door from inside and took out the Garka (Dao) in his hand and made my sister Sazia tie my hands and later tied Sazia hands and threatened us, when I freed my hands and started opening the door, Salim started beating me and tied my hands again and stood behind the door. Salim told us, let me talk to Hina and call her here. I want to talk to Hina, So I called from my mobile number 9289880701 and I got a call from Hina mobile number 9971527253 and Hina talked to Salim and Hina said I am coming, Salim you open the door, then Salim said that I will open the door when Hina comes here. When Hina did not come, Salim picked up the scissors kept inside the room and put it on Sazia neck and said that I will not leave you until Hina comes and with the intention of killing her, he put it on my sister neck and when my sister and I tried to save ourselves, Salim stabbed my sister Sazia twice and when my sister and I tried to escape, he attacked my sister left hand thumb and lip with scissors. Hearing the noise, my father and many people from the vicinity gathered. When my father tried to enter inside, Salim attacked my father lips and forehead with scissors and my father got badly injured. I hardly saved my life by opening my hands and opened the door completely and then I immediately came out and the people standing outside caught Salim and they gave several injuries to Salim. That they firstly took my sister Sazia to the Park Hospital for treatment. From there the doctor referred my sister Sazia to Safdarjung New Delhi for treatment. Where my sister Sazia is undergoing treatment and her condition is serious. The above mentioned Salim has forcibly held me and my sister Sazia hostage in a room by tying our hands and has attacked my sister Sazia and my father Nasrudin with scissors with the intention of killing them and has threatened to kill us. Strict legal action should be taken against Salim, I have submitted my written complaint to you.”*

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioner contends that all the injuries inflicted on the person of the complainant is declared to be simple in nature and nothing is to be recovered from him. Moreover, he has already suffered 01 year, 01 month and 04 days in custody and he is a man of clean antecedents as he is not involved in any other case.

**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 present petitioner has caused injuries on the head and lip of the complainant with the help of scissors.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 01 month and 04 days for which the petitioner has suffered incarceration; the injuries inflicted on the person of the complainant is declared to be simple in nature; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 01.02.2024, charges have framed on 01.06.2024 and out of total 23 prosecution witnesses only 07 witnesses have been examined so far, 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 “**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.

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.

17.12.2024

Poonam Negi

(SANDEEP MOUDGIL)  
JUDGE

*Whether speaking/reasoned*  
*Whether reportable*

*Yes/No*  
*Yes/No*