

2025.PHHC:039553



217-2

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

**CRM-M-1775-2025
DECIDED ON: 24.03.2025**

**JASWINDER SINGH ALIAS JASSI ALIAS LALA
.....PETITIONER**

VERSUS

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

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. A.S. Khosa, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This is 2nd Petition under section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 seeking grant of regular bail to the Petitioner in FIR No. 0222 dated 05/11/2023 under section 304, 34 Indian Penal Code, 1860, registered at Police Station Sadar Fazilka District Fazilka.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Gurbakhshish Singh son of Kulwant Singh son of Deewan Singh, resident of Village Lakhe Ke Uttar, aged about 28 years, mobile No. 79864-55052, stated that I am resident of the above said address and doing the agriculture work. We are three brothers. Younger to me Gurbaj Singh and younger to him Angrej

Singh. That on 25.10.2023 I was present at my home, then the son of my Taya/uncle Aasha Singh namely Rajwinder Singh, who is living at Fazilka and is serving at Department of Agriculture of SBI. That because he got late therefore he came to my house. That my brother Gurbaj Singh who is working as lifting kuttal/mustard straw, that inspite of being very late in the night, my brother Gurbaj Singh did not come back home, therefore, I told my cousin brother Rajwinder Singh that Gurbaj Singh has not come back yet as he had gone to Mandi Ladhuka, who further told me to lets go to Mandi and we will come back together alongwith Gurbaj. When we both on our motorcycle were going to Mandi Ladhuka from our village, then time around 9-30 PM, we crossed Inderjit Sandhu Petrol Pump. Balwinder Singh @ Bindu S/O Kartar Singh resident of Lakhe Ke Uttar of our village called me and told me that your brother Gurbaj Singh fell down who was Ankur Randhawa coming to the village from the market. When I and my uncle's son reached saw mill near Ferozepur road, we saw that Lala son of unknown resident of Village Nooran, Kali Ghubaya son of unknown resident of Ghubaya, Rajdeep alias Raj Singh son of Sona Singh resident of Hire Wala were giving betting to my brother Gurbaj Singh, when we saw our brother Gurbaj Singh, then we raised a clamour 'Maar Ditta- Maar Ditta', then these three shouted that there has been an accident, after saying that, they went away. We arranged a vehicle and took our brother Gurbaj Singh, who had suffered head injuries and the blood was oozing out to Civil Hospital Fazilka for treatment, where my brother was referred to Faridkot Hospital due to injuries on his head and his critical condition, therefore, we admitted my brother Gurbaj Singh at nearby place Shri Ganganagar in Aarish Hospital for his treatment on 4-11-2023, during the treatment, my brother Gurbaj Singh died. A few days earlier, there arose a dispute with regard to mustard straw between my brother Gurbaj Singh and Kaali Ghubaya, Lala Nooran, Raj Singh @ Raju Heere Wala and Balwinder Singh alias Bindu residents of Lakhe Ke

Uttar, due to the said grudge, Kaali Ghubaya, Lala Nooran, Rajdeep Singh @ Raj Singh @ Raju Heere Wala and Balwinder Singh alias Bindu residents of Lakhe Ke Uttar in connivance with each other gave beating to my brother, due to the said injuries My brother Gurbaj Singh has died. Therefore, appropriate legal action will be taken against the said persons and justice be given to us. I have written a statement and read and is correct. Sd/- Gurbaj Singh.”

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 and there is a delay of ten days in lodging the FIR for which no explanation has come forth by the prosecution. He submits that on account of an accident Gurbaj Singh (since deceased), petitioner as well as co-accused received injuries. He asserts that the unfortunate incident occurred due to the aforesaid accident, which is neither intentional nor having the knowledge as the sans of intent is totally absent and therefore, it would be unjust to detain the petitioner behind the bars.

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. He could not controvert the fact of accident and no specific role has been attributed to the petitioner. Though he prays for dismissal of the present petition stating that the petitioner is a habitual offender, as he is involved in other cases.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 11 months and 21 days and no specific injury has been attributed to the petitioner added with the fact that investigation is complete, challan stands presented on 13.05.2024, charges are yet to be framed thereafter total 15 prosecution witnesses are to be examined. This Court is sanguine of the fact that conclusion of trial shall take considerable time, 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.”

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

24.03.2025

Meenu

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