



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

**CRM-M-2384-2025 (O&M)
DECIDED ON: 04.03.2025**

SAHAB SINGH ALIAS SHABU

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.S. Matya, Advocate for the petitioner.
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

CRM-8081-2025

This is an application for placing on record the order dated 13.02.2025 passed by Addl. Sessions Judge, Palwal as Annexure P-13.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Annexure P-13 is taken on record.

Application stands disposed of.

CRM-8082-2025

This is an application for seeking exemption from filing certified/true typed copy of order dated 13.02.2025 i.e. Annexure P-13.

For the reasons mentioned in the application, the same is allowed. Exemption sought for is granted.

Application stands disposed off.

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 case titled as

Mahesh Kumar versus Sant Raj & others, bearing No.COMI 69 of 2014 arising out of FIR No.249, dated 14.10.2002, under Sections 148, 149, 447, 427, 307, 506 IPC and Section 25 of Arms Act, registered at Police Station Hassanpur, District Palwal (earlier Faridabad) i.e. Annexure P-1.

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

“Statement of Mahesh Kumar son of Sh. Budhan caste Gujjar resident of Kashipur, Age 30 Years. I hereby state that I am resident of afore-mentioned address and I do agricultural work. We have agricultural fields near the Yamuna in Village Fatehpur, U.P. That the area of U.P. touches with area of our vile, where, we have about 20 Acre land. About 25 days ago we had sown mustard crop in our 20 Acre land. Today I alongwith my brother Ram Hans, Munesh, Chander Pal sons of Kishan Singh, Satish Kumar son of Hargyan, my nephew Jagat Singh son of Ajay Singh resident of Village had gone to our agricultural fields on tractor-trolley. When at time about 10:00 AM we reached at the passage near our fields then we saw that three tractors were operating in our fields and were destroying the mustard in our fields and about 15 persons armed with rifles, guns, sticks, farsa (sharp-edged weapon) were standing at the katcha passage which goes to our fields. On seeing us all of them in connivance with each other said by raising lalkara that today kill them. Straightway after saying this Santraj son of Radhey Lal Gujjar resident of Bilochpur fired at me with a rifle, which he was holding in his hands, with intent to kill me and fire hit me on my left hand. Rajan son of Harchand Gujjar resident of Bilochpur gave blow

of farsa (sharp-edged weapon) on my head. Sukku son of name not known resident of Bilochpur gave two blows with rod in my waist. Pyare son of name not known, Sahbu son of Likhi resident of Jatwari, Rajbir son of Hari Gujjar resident of Hussaini. Manoj son of Karambir resident of Mohana, Sonu son of Santraj resident of Bilochpur also fired at all of us with rifles which they were holding in their hands with intent to kill us and all of us have been hit with bullets. I do not know the name of other persons who were with Santraj. Santraj in order to take possession over our 20 Acre land drove tractors in our land and destroyed our mustard crop and have damaged the tyres of our tractor-trolley by firing bullets. When we raised alarm for help then Amar Singh son of Ram Singh Gujjar resident of our village and many other residents of village came and they saved us and at the time of going away, assailants gave threat of killing us any other day. After this incident Kishan son of Nathi resident of our village admitted Chander Pal at Diamond Hospital Palwal and admitted others at B.K. Hospital Faridabad for medical treatment. Now I have recorded my statement at B.K. Hospital Faridabad, heard, is correct.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the specific allegation of gunshot injury has been attributed to co-accused Santraj son of Radhey Lal, Farsa blow has been attributed to co-accused Rajan and rod blows has been attributed to co-accused Sukku. He further contends that no specific role has been attributed to the petitioner except being part of the group which caused assault. It has been contended that no gunshot injuries

were found on the person of the complainant and on an earlier occasion finding the allegations to be false the investigating agency has presented a cancellation report qua all the accused persons, which was accepted and notice was served upon the complainant. The complainant filed a protest petition before the trial Court on 04.04.2008 wherein, after recording of preliminary evidence the said complaint was dismissed vide order dated 14.07.2010. Aggrieved against the said order, revision petition filed by the complainant was allowed by learned Additional Sessions Judge, Palwal with a direction to send the case back to the police station concerned for investigation.

On behalf of the State/complainant

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He along with Mr. Gaurav Gupta, Advocate who has put in appearance on behalf of the complainant and has filed Memorandum of Appearance and seeks dismissal of the instant petition on the ground that the allegations against the petitioner and his co-accused persons are serious in nature and the petitioner was earlier declared proclaimed offender vide order dated 10.03.2016

4. **Analysis**

Be that as it may, considering the custody period i.e. 04 months and 06 days for which the petitioner has suffered incarceration; no specific role or injury has been attributed to the petitioner; 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 the evidence is midway, 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.

As far as contention of learned State counsel as well as counsel for complainant on the conduct of the petitioner, who was declared proclaimed offender, is concerned, the said order dated 10.03.2016 is no more in force as the petitioner is attending the trial after he surrendered on 28.10.2024 and since then he is in custody of the police.

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 him 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

04.03.2025

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No