



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3435-2025
DECIDED ON: 17.02.2025

RAHUL BHATI ALIAS BHOLU

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ankur Malik, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

Mr. Jitender Singh Kundu, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the second time under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.156, dated 27.08.2022, under Sections 323, 341, 506, 148 and 149 IPC (Sections 324, 308, 201, 34 IPC added later on) registered at Police Station City Rupnagar, District Rupnagar.

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

“Report No.16 dated 25.8.2022 time at 3.26 PM is recorded that at this time I ASI alongwith other colleagues come to the Police Station from Civil Hospital, Rupnagar after obtaining the statement of complainant Amit Kumar son of late Mohan Lal resident of house No.2715 Mohalla

Phool. The statement is as under. I Amit Kumar son of Mohan Lal resident of house No.2715 Mohalla Phool chakra Rupnagar Police Station City Rupnagar District Rupnagar aged about 36 years mobile No.82644+57823 stated that I am a resident of abovesaid address. I am doing a private job. Yesterday on 24.8.2022, I was returning to my house from the shop where I work at Jagjit Hardware, old bus Stand Rupnagar. I was on my motorcycle. It was around 9.15 pm when he was riding, Bhai Lale Bholi whose real name is Rahul Bhati resident of Balmik mohalla Rupnagar, Bhinder resident of Balmik Mohalla, Rupnagar, Guggi son of Vijay Kumar resident of jersey farm Rupnagar, and some unknown person were standing there, who stopped me and started beating me, Bholi alias Bhatti armed with Dat in his hand, Bholi gave a dat blow upon me which hit me on the back of left ear on my head ad I fell down on the road due to bleeding, after which Tinder struck my right hand with the kirpan and so on. Someone also hit me on the leg, I raised raula to defend myself, then other people from the market also gathered, who then ran away from the spot after beating me, after which my brother Sukhpreet Singh also came who took me and admitted in civil Hospital Rupnagar where I am under treatment. Action be taken against Rahul Bhati resident of Balmik mohalla Rupnagar, Bhinder resident of Balmik Mohalla, Rupnagar, Guggi son of Vijay Kumar and two unknown persons.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that a compromise has been entered into between the parties i.e. complainant and the petitioner with the intervention of respectable people of the society, as is evident from

Annexure P-2. He further contends that co-accused namely Narender Kumar

@ Bhinder has already been granted the concession of anticipatory bail by this Court vide order dated 08.08.2023 (Annexure P-4) passed in CRM-M-45603-2022.

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 learned counsel for the complainant could not controvert the fact that a compromise has been entered into between the parties, however, seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in another case, wherein he is not on bail.

4. **Analysis**

Be that as it may, considering the custody period i.e. 09 months and 05 days for which the petitioner has suffered incarceration; co-accused namely Narender Kumar @ Bhinder has already been granted the concession of anticipatory bail by this Court vide order dated 08.08.2023 (Annexure P-4) passed in CRM-M-45603-2022 in addition to the fact that investigation is complete, challan stands presented to Court on 08.07.2024, charges have been framed on 09.10.2024 and out of total 10 prosecution witnesses, 04 witnesses have been examined and 02 witnesses have been given up, 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.

In addition to above, a compromise has been entered into between the petitioner and the complainant, as is evident from Annexure P-2, which is reproduced hereinbelow:-

“Amit Kumar son of Sh. Mohan Lal resident of H.No.2715, Mohalla Phool Chakar, Rup Nagar, Tehsil and Distt. Roop Nagar (herein after called first party).

And

Rahul son of Sh. Surinder Nath resident of h.No.442, Meera Bai Chowk, Rup Nagar, Tehsil and Distt.Rup Nagar and Narinder Kumar son of Kasturi Lal, Resident of H.No.659, Balmiki Mohalla, Rup Nagar and Ghugi son of Sh. Vijay Kumar R/o Jarsi Farm, Rup Nagar (hereinafter called second party).

The first party due to mis-understanding got registered false FIR No.0156 under Section 323, 324, lateron added 308 IPC, DDR 25 dated 30.8.2022, 341,506, 145,149 IPC against second party in police Station City Rup Nagar. Now with the intervention of respectable people of the society, the matter has been compromised between the parties. Now there is no dispute between the parties and both the parties are ready to give statement for ending the case. Now both the parties have agreed with each other. Now the first party do not want to pursue the case against the second party. Hence, the case registered by the first party against the second party be cancelled. And the first party has no objection for the same. Therefore, compromise has been written so that it can be used as document. Dated:27.10.2022.

First Party

Second party

Sd/-

Sd/- Sd/- Sd/-

*Amit Kumar S/o Mohan Lal
8264457823*

*Rahul & Narinder &
Ghugi*

9876706955, 9781339746, 987229288”

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.

As far as 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 land the petitioner in a situation of denial of concession of bail.

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

17.02.2025

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No