

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

226

CRM-M-3321-2025
DATE OF DECISION: 27.01.2025

KISHANJIT SINGH ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Munish Puri, Advocate for the petitioner(s).

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail for the petitioner in FIR No.256 dated 26.09.2021, under Sections 395 IPC (120-B/212/201 IPC added later on) and Sections 25/27/54/59 of Arms Act, Police Station Division B, District Police Commissionerate Amritsar.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘Statement of Davinder Singh son of S. Kuldeep Singh resident of H. No. 289, New Azad Nagar, Sultanwind Road, Amritsar aged about 35 years, mobile no. 7837568484. Stated that I am the resident of aforementioned address and I am the owner of the shop Bille Di Hatti bearing shop no. 172/173 at Golden Cloth Market, Sultanwind Gate and I am license holder of Western Union and does the work of selling clothes and money exchange at the shop. My uncle (chacha) Wajir Singh son of Aroor Singh and his



son Dalbir Singh son of Wajir Singh resident of H. No. 22, Ram Singh Colony Tarn Taran Road Amritsar also does the work of money exchange at the shop and daily we used to open the shop at 9 am and after closing the shop at 9 pm, we went to our own respective houses. As a daily routine on 26/09/2021 we all three of us came to our shop at 9 am, it was about 11.15 am I and my chacha Wajir Singh and his son Dalbir Singh was present at shop. That one customer Simranpreet Singh son of Lakhwinder Singh resident of H. No. 74, Anand Puri Avenue, Kale Mod Amritsar came to our shop and asked UK Pounds in exchange of 1 lakh rupees of Indian currency. In the meanwhile four youngsters out of which three youngsters were having pistols in their hands entered our shop. The unknown youngster pointed their pistol towards us and our customer Simranpreet Singh and told us to take out all the money. We step backward out of fear and one youngster take out bag of money from the drawer of counter of shop which contain 300 notes of denomination of Rs. 2000/- total Rs. 6 Lakhs Indian Currency, 300 notes of denomination of Rs. 500/- total of Rs. 1,50,000 Indian Currency. 560 UK Pounds, 400 US Dollars and 6200 Dirham Dubai Currency and also snatched Indian Currency of Rs. 1 Lakh from the hands of our customer aforementioned Simranpreet Singh while giving threat of pistol and snatched gold chain weighted 13 grams from my neck and also picked up polythene from our counter carrying Aadhaar Card, PAN Card and other important documents of our customer and ran away. That time I and my chacha ran behind them and raised the alarm, 'fado-fado'. That their two companions were standing while starting their motorcycle at main road in front of Sewa Singh Hall and total 6 youngsters while riding on 2 different-different motorcycles went towards Ajit Nagar. It is requested that legal action be taken against 6 unknown persons for committing aforementioned incident in our shop. Statement has been recorded to you in this respect. Statement has been read over the same is correct. Sd/ Davinder Singh Attested Paramjit Singh ASI, PS B-Division Amritsar, dated 29/06/2021.'

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 as the instant FIR was earlier lodged against some unknown persons and the petitioner was nominated on the basis of suspicion. He submits that co-accused namely Jatinder Pal and Shamsher Sigh @ Sherry have already been granted concession of regular bail vide orders dated 20.03.2023 and 26.04.2023 passed in CRM-M-12769-2023 and CRM-M-19428-2023. He further submits that the complainant Davinder Singh has already been turned hostile, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 3 years, 3 months and 10 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in many other cases, meaning thereby he is a habitual offender but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 3 years, 3 months and 10 days, similarly situated co-accused has already been granted concession of bail by this Court, complainant has already

been turned hostile, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 06.01.2022 charges stands framed on 06.02.2023 out of 26 prosecution witnesses, 14 PWs have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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 the concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expressiron of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

27.01.2025
anuradha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No