



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3845-2025
DECIDED ON: 21.04.2025

MUDASSIR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Farukh Abdullah, Advocate for
Mr. Afjal Hussain, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl. A.G., Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. with the prayer for the grant of Regular Bail to the Petitioner in the case of F.I.R. No. 139 dated 08.05.2024 under Sections 148, 149, 323, 452, 506, 326 of Indian Penal Code (IPC), 1860 registered at Police Station Punhana, District Nuh.

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

“To the SHO, Police Station Punhana. Subject-Request for taking legal action against 1. Mahmud son of Fajju, 2. Junaid son of Mahmud, 3. Mulli son of Shahabuddin 4. Mudassir son of Fakruddin, 5. Kasam son of Fajju, 6. Tousif son of Aas Mohammed, 7. Aas Mohammed son of Hariya, 8. Fakruddin son of Ali Jan, 9. Nassa son of Israil, 10 Asar son

of Shaudan, 11. Muqeem son of Sharif, 12. Rish son of Ratti, 13. Fayya wife of Majlash and 15-20 other residents of Jamalgarh Police Station Punhana. Sir, the request is that I, applicant Maqsood son of Yasin is resident of Jamalgarh, Police Station Punhana, District Nuh and am a law abiding person. Today on 06.05.2024 at about 12 o'clock the incident is that my son Asif was coming from home to Punhana and when my son reached in front of Umar's house, the accused Mudassir Mahmud, Mulli, Qasim started abusing my son as soon as they saw him and when my son Asif came near and protested against the abuse and said why are you abusing me without any reason, then all the accused made a deadly attack on my son and with great difficulty my son saved his life and ran towards his house, then the accused also started running behind him and with great force and 1. Junaid son Mahmud 2. Tausif son of Aas Mou. 3. Aas Mou. son Hariya 4. Fakruddin son of Ali Jan 5. Narsa son Israel, 6. Aasar son Shaudan 7. Muqeem son Sharif 8. Rish son of Ratti 9. Fayya wife of Majlash And 15- 20 other residents of Jamalgarh Police Station Punhana started calling out and on hearing the voice the accused came running towards our house with sticks and iron rods in their hands and as soon as they came, they entered the house and attacked my son and when Umar Mohammad and Sajid tried to save my son, the accused did not spare them also and started beating them badly and when my son shouted for help, many people came to the spot who saved my son and Umar and Sajid with great difficulty, otherwise the accused would have killed them and while leaving the accused were saying that today you have been saved, if we get a chance next time, we will kill you. Sir, the accused are dangerous and domineering people and had beaten us up even in the month of Ramzan, for which the decision had been taken in the community, but the accused hold a grudge since that time and the accused Lugman son of Sahabudin, Kala son of Majlash and Sameer son of Rish, through their Whatsapp number and other social media, threaten to kill us and abuse us in very vulgar language. We

have requested their families many times with folded hands not to do so, but the accused did not listen and due to this grudge, they entered our house and beat us up today. Sir, all the injured will tell about their injuries themselves. Hence, it is humbly requested to you that a case be registered against the said accused and strict legal action be taken and our life and property be protected. Applicant Maqsood son of Yasin resident of Jamalgarh Police Station Punhana District Nuh. Mobile No. 9813994754 Date: 08-05-2024.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and no specific injury has been attributed to him. He further contends that co-accused namely Kasam and Toshif have already been granted the concession of regular bail by this Court vide orders dated 28.11.2024 (Annexure P-4) and 08.01.2025 (Annexure P-5) passed in CRM-M-52224-2024 and CRM-M-63281-2024 respectively. It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

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. Akram Hussain, Advocate seek dismissal of the instant petition on the ground that the petitioner along with other co-accused persons attacked upon the son of the complainant due to which injured Umar Mohd., lost the complete vision of his one eye.

4. **Analysis**

Be that as it may, considering the custody period i.e. 08 months and 25 days for which the petitioner has suffered incarceration; no specific injury has been attributed to him; co-accused namely Kasam and Toshif have already been granted the concession of regular bail by this Court vide orders dated 28.11.2024 (Annexure P-4) and 08.01.2025 (Annexure P-5) passed in CRM-M-52224-2024 and CRM-M-63281-2024 respectively in addition to the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate.

Also considering the fact that investigation is complete, challan stands presented to Court on 17.09.2024, charges have been framed on 18.11.2024 and out of total 12 prosecution witnesses none has 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. **RELIEF:**

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

21.04.2025

Poonam Negi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No