



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRM-M-4667-2025

Date of decision: 10.02.2025

Harpreet Singh @ Happy

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lakshay Bector, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail in DDR No.27 dated 11.05.2024 under Section 307 IPC and Section 25 of the Arms Act registered as cross case in FIR No.12 dated 27.02.2024 under Sections 302,307,34 IPC registered at P.S P.A.U, District Ludhiana.

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

“ Statement by Vikramjit Singh @ Vicky son of Sukhwinder Singh resident of village Badewal near Swami Narayan Mandir Ludhiana aged 33 years stated that I am a resident of the said address. On 26-02-2024 me and my friends David, Hardeep Singh @Ghugga and Tirath Singh @ Kala were sitting in the rented house of David near Maan Palace, Haibowal Ludhiana. At around 7 o'clock in the evening Harpreet Singh @ Happy called me from his phone on my phone and made lalkara by saying that I and Babu have come to your house, come out of the house, on which I said on the phone that I am out. Then at that time only he said to me that in which hole are you hiding? During this time, he fired in the air in front of my house and said on the phone that if you would have been home today, this fire would have been shot in your chest. If you don't believe me then ask your family right now



about the firing that just happend, and then hung up. After that, I called my mother Jasveer Kaur and asked if someone had fired there, then my mother said that someone made lalkaras and was yelling and cursing at the door outside the house. They didn't go out because of being scared after hearing the fire shots. The sound of fire was heard by my mother. After that, I got a call from Harpreet Singh alias Happy again, so I got into an argument with him and during the call my friend Hardeep Singh @ Ghugga talked to Harpreet Singh @ Happy on the phone and during the conversation Suraj Prakash @ Babbu also called him. During the conversation they got into an argument and started asking each other over the phone. Harpreet Singh @ Happy asked on the phone that where are you then Hardeep Singh @Ghugga said that we are at Haibowal. Then Harpreet Singh @ Happy and Suraj Prakash @ Babbu said that if you come near Haibowal Dairiya then we all will get together and talk to each other and resolve everything. On which we all sat in David's car Creta and on the way, near Kali Mata temple, David picked up another friend of his in the car and we five persons reached David's above mentioned house. Meanwhile, I called Harpreet Singh @ Happy and asked where are you, who said that we are standing in front of the petrol pump, come here only. We drove in David's Creta car and walked to the other side of the road in front of the petrol pump, where Suraj Prakash @ Babbu and Harpreet Singh @ Happy were already standing there on black coloured Bulsor motorcycle. After that I and Hardeep Singh @ Ghugga got out of the car and were about to talk to Harpreet Singh @ Happy when David got out of the car from the other side and suddenly shot at Suraj Prakash Babbu and Suraj Prakash @ Babbu fell on the ground. Then Harpreet Singh Happy drew his pistol towards me and fired at me which did not hit me, then Harpreet Singh @ Happy started to shoot me for the second time. The fire of the ammunition was missed. Who ran away from the spot and started firing at us. So, David and I ran after Harpreet @ Happy and fired 2/3 bullets as I also had David's 32 bore pistol. Harpreet Singh @ Happy taking advantage of the darkness hid in the Dairies there. Then we came back and got into the car and the five of us left the spot but David went a little far and turned the car back from the cut where



Harpreet Happy was already standing near the dead body of Suraj Prakash @ Babbu. Who saw us and started open firing at our vehicle, then David got out of the vehicle and fired at Harpreet Singh Happy, who was hit in the stomach by a bullet, then he fled the scene in an injured condition. I then picked up pistol from the side of dead body of Suraj Prakash @ Babbu and kept it in the car and all five of us ran away from the spot in the car. I have given you my statement, it is correct. ”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that it is a case of version and cross version and the instant DDR has been registered against the petitioner after unexplained delay of 03 months on the statement of Vikramjit Singh @ Vicky and that no injury has been caused by the petitioner to the complainant party. He has further argued that the petitioner has already suffered incarceration for the last 08 months and 27 days and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 22 Prosecution Witnesses, not even a single witness has been examined so far.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and produced custody certificate of the petitioner. He submits that challan in this case was presented on 09.08.2024 and charges are yet to be framed and there are total 22 Prosecution Witnesses cited.

Analysis

5. Be that as it may, considering the fact that no injury has been caused to the complainant party and the present case is a cross version to the FIR registered by the petitioner against the complainant and that the petitioner has suffered sufficient incarceration for almost 08 months and 27 days with no



prosecution witness having been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 ReInhuman 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.”*

6. 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 as 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 Khatoun and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that



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.

7. 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.

Decision

8. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of BNSS, 2023 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

10.02.2025
manoj