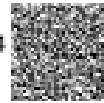


2025:PHHC:016984



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5578-2025
DECIDED ON: 05.02.2025

GURWINDER SINGH ALIAS MANN ALIAS BAGGA
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sidhant Vermani, Advocate
for the petitioner.

Mr. Rubal Pawar, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS 2023 has been invoked for the grant of regular bail to the petitioner in FIR No. 191, dated 25.10.2023, under Sections 302, 307, 148, 149, 120-B of IPC read with Section 25/27 of the Arms Act, 1959 registered at Police Station Cantonment Amritsar.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Balwinder Singh Son of Balkar Singh Resident of Village Ratte-ke Police Station Khem Karn District Tarn Taran now Resident of House No. 5 Street No. 8 Moni Park Police Station Islamabad ASR Age About 65 Years Mobile Number 9855263874, it is stated that I am a resident of the above said address and I was working as guard till 2011 in

Cooperative Sugar Mill Jira now I am doing my farming. Gurpraves Singh was my only son who is about 22 years old who was working as hotel manager at Khalsa College ASR. Today my brother Resam Singh son of Balkar Singh resident of village Ratte-ke had also come to our house and as it was Dussehra holiday, me and my son and wife Lakhwinder Kaur were present in my house. My son told me that my friend Sunitpal Singh alias Bal son of Ajmer Singh resident of Urban Estate Ram, Tirth Road, ASR has called him, but I stopped my son from going and said that today is the day of Dussehra, where are you going, even though I told him, my son left home at that time it was around 12/30 PM. Me and my brother Resam Singh also took his motorcycle towards Bal's house and went to Ram Tirth Road. When we reached Radha Swami Dera, Ram Tirath Road, I saw that my son Gurpraves Singh was sitting in his friend Bal's car and Ball was driving the car and were going towards the bypass. We took our motorcycle behind them. Just a head of Holy City Bridge before the bypass, there was already an accident of Inova Crista and Verna car. Some boys were already standing there. Ball also stopped his car and got out of the car and started talking to the boys. At that time it was around 2.00 PM. We were a little behind and 3-4 cars came from our rear side, out of which 10/12 boys got out. One of the boy named Fateh Randhawa from Kukkrwala started fighting with Ball and Fateh Randhawa took out his pistol and started hitting the butt of the pistol on Ball's head. Whereupon Ball and Fateh Randhawa got into a fistfight. My son Gurpraves Singh started to free them but others came with Fateh Randhawa. The boys took out their own weapon and started firing directly with the intention of killing, one of which hit my son Gurpraves Singh on the left side of his waist and some bullets also hit left side of his stomach. Me and my brother raised the alarm of killed-Killed. Then Fateh Randhawa party got into their car along with their own weapons and escaped from the spot. My son fell downn on the ground. I along with my brother Resham Singh and some of the boys got him admitted in Amandeep Hospital ASR after arranging the vehicle. However, he died during the treatment. Now I have come to know that my boy's friend Sunitpal Singh aka Bal has been shot in the left arm and another boy who is standing next to Ball is Sawanpreet Singh son of Gurbhaj Singh. resident of village Kombo ASR, was shot in both the legs. Both these boys are under treatment at Guru Nanak Dev Hospital ASR. The boys who shot, Fateh Randhawa, Gurwinder Maan Bagga, Parman, and Bhola @ Lada, about them I have come to know. I can easily recognise the others in case they appear before me. The cause of enmity is that Sunitpal Singh already had tussle with Fateh Randhawa,

however, excesses have been committed with us, strict action be taken against the culprits. SD/- Balwinder Singh”.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and was not present at the spot of alleged occurrence and is not involved in any kind of alleged attack on the deceased. He has drawn attention of this Court to the orders dated 02.05.2024, 17.05.2024, 11.12.2024 (Annexures P-2 to P-5) passed in CRM-M-11205-2024, CRM-M-9081-2024, CRM-M-23856-2024 and CRM-M-27622-2024 respectively, vide which similar placed co-accused persons have already been granted the concession of bail by the co-ordinate Bench of this Court.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating the allegations against the petitioner are serious of nature, but he could not controvert the fact that co-accused persons have already been granted the concession of bail.

4. Analysis

Be that as it may, considering the fact that the petitioner has already suffered incarceration of 9 months and 28 days and not involved in the other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 29.06.2024, charges are yet to be framed and total 46 prosecution witnesses are to be examined, meaning thereby conclusion of trial shall take considerable time, no useful

indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 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

05.02.2025

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>