



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

246

CRM-M-5491-2025
DATE OF DECISION: 04.02.2025

GURBACHAN SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. H.S. Batth, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail in FIR No. 10 dated 01.04.2024 under Sections 419, 420, 465, 467, 468, 471, 201, 34, 120-B IPC at P.S. NRI, Police Commissionerate, Amritsar, District Amritsar City.

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

'An application UID No. 2398647 has been given by Karampreet Singh to Director General of Police, NRI Wing, Punjab, the details of the same are as follows:- To, Sh. Kuldeep Singh Dhaliwal, NRI. Cabinet Minister Government of Punjab, Chandigarh. Subject: Request regarding taking action after registration of FIR for preparing fake power of attorney and executing registered sale deed against:-1) Kanwalpreet Singh son of Jalwant Singh (2) Rajwant Kaur wife of Kanwalpreet Singh (3) Sangrampreet Singh son of Palwinder Singh (4) Tarsem Singh Numbardar (5) Kulwant



Singh son of Karnail Singh all residents of village Chaudhary Wala, Tehsil and District Tarn Taran. Sir, it is requested that. I am Karampreet Singh son of Palwinder Singh son of Jalwant Singh Pannu village Chaudhary Wala, Tehsil and District Tarn Taran, at present resident of Melbourne Australia and owns a property. My grandfather Jalwant Singh owns and occupies 28 kanals and 14 marles of land at village Chaudhary Wala. My grandfather Mr. Jalwant Singh has passed away. That the abovesaid accused Kanwalpreet Singh is my uncle (chacha) from my paternal side relatives, Rajwant Kaur is my aunt, Sangrampreet Singh is my real brother. Accused Kanwalpreet Singh prepared a forge power of attorney regarding the property of my grandfather Jalwant Singh by bringing unknown person in the place of my grandfather Jalwant Singh in his favour in connivance with other co-accused and accused Tarsem Singh Numbardar and Kulwant Singh have testified this fake power of attorney as witnesses. Kanwalpreet Singh and Rajwant Kaur used to fight with my grandfather in the house for no reason in and used to say bad things all the time. because of which he had explained them earlier that if you do not behave well with me, I will not give you any share from my property. Their behaviour never went well towards my grandfather Jalwant Singh and instead of mending their behavior, they conspired with all the accused and firstly prepared a fake power of attorney dated 19/04/2022 in favour of Kanwalpreet Singh, in which signatures of my grandfather Jalwant Singh were forged by standing someone else in his place and also put his photograph on the endorsement of Power of attorney in his place and accused Tarsem Singh Nambardar and 'Kulwant Singh gave false testimony as witnesses and portrayed accused Balwant Singh as Jalwant Singh before the Magistrate. It is also worth mentioning here that our land is situated at village Chaudharywala and my grandfather's residence was also at village Chaudharywala. But the abovesaid fake power of attorney dated 19/4/2022 has been registered in Amritsar-3, so that no one in the village can have any knowledge of it and no one can identify the fake person who has stood in place of my grandfather. On the basis of the abovesaid power of attorney. Kanwalpreet Singh has executed two sale deeds of land 20 Kanal 18 Marla in favour



of his wife Rajwant Kaur dated 21/4/2022 and the other sale deed of Land 7 Kanal 16 Marla in favour of his noured Sangrampreet Singh dated 21/04/2022 and attempted to grab our property through fake power of attorney and have committed cheating with us in broad daylight. The said witnesses Tarsem Singh and Kulwant Singh have given their testimony knowing that the power of attorney is fake and bogus. That my grandfather Jalwant Singh never executed any power of attorney in favour of Kanwalpreet Singh or anyone else, nor did he got clicked his photograph by appearing before any "Magistrate and nor have appended his signatures on any power of attorney. Even when my grandfather was still alive, he had filed complaints against the accused before various police officers. but no action has been taken against the accused till date. Therefore, it is requested to conduct immediate investigation regarding the fake power of attorney dated 19/4/2022 made by the said accused persons in consultation with each other and regarding grabbing of our property by accused by further executing sale deeds and case be registered against the accused persons under the relevant sections for defrauding us and justice be delivered to us. Will be highly obliged. Sd/-, Applicant Karampreet Singh son of Palwinder Singh son of Jalwant Singh Pannu Village Chaudharywala. Tehsil and District Tarn, resident of Melbourne at present Australia Mo. No. +61431021033.9876137270 karampreet.pannu@gmail.com v

ide 19/01/2023, the abovesaid application has been received from the office of Additional Director General Police NRI Wing SAS Nagar Punjab G vide Office Letter No.1917/Nodal Desk-1 Dated 23.01 2023 to the Office of Assistant Inspector General of Police a NRI Wing Amritsar to investigate the said application and from Assistant Inspector General of Police, NRI Wing Amritsar, the application has been marked to Inspector Jasbir Singh Office of Assistant Inspector General of Police, N.R.I Wing Amritsar. During investigation, the opposite party Kanwalpreet Singh son of Jalwant Singh resident of District Tarn Taran filed an application UID No. 2403394 dated 01.11.2023 in the office of Additional Director General Police NRI Wing, SAS Nagar, the said application from the office of Additional Director General of Police NRI Wing SAS Nagar Punjab, No. 29984/Nodal Desk-1 NRI Wing



dated 06.11.2023 has been received in the Office of Assistant Inspector General Police NRI Wing Amritsar for investigation. The Assistant Inspector General of Police, NRI Wing, Amritsar, has marked the abovesaid application to Inspector Jasbir Singh, Office of the Assistant Inspector General of Police, N.R. I. Amritsar for investigation, who wrote in his report that 1. During the enquiry of the application, it was found that the applicant Karampreet Singh is an NRI of Australia, whose grandfather Jalwant Singh son of Ghasita Singh son of Ralla Singh resident of village Chaudhary wala, district Tarn Taran was having at village Chaudhary wala, Nowshera Pannua, district Tarn Taran, as per Jamabandi pertaining to year 2018-2019, in Khewat no. 152 and Khatauni no. 452, Khasra number 13// 25 (6-13) and Khatauni no. 453, Khasra number 22//20/1/1 (2-0), 23//12 (8-0), 23//13 (8-0), 23// 14 (8-0). 23//15 (8-0), 23//16/1 (2-18), 23//17/1 (2-18). 23//19/1 (2-13) and Khatauni no. 454, Khasra number 14//1/1 (4-4), 14//3/2 (7-14). 14//23/1/2 (1-6), 22//11/1 (1-6), 23//4 (8-0), 23//5/1 (5-12) and Khatauni no. 455, Khasra number 23//2/2 (1-18), 24//5 (8-0) and Khatauni no. 456, Khasra number 22//10/2 (1-6), 23//16 (8-0) and Khatauni no. 457, Khasra number 13//16 (7-18). 14//19/2 (4-0). 14//20 (8-0), 14//21 (8-0), 14//22/1 (4-4), 22//11/1 (2-10) and Khatauni no. 458, Khasra number 23//18 (8-0) and Khatauni No. 459 Khasra No. 23//17 (8-0), 23//18 (8-0), 23 //9/1 (7-9), 23//10/1 (1-14), 24//6/1 (4-10) and Khatauni no. 460, Khasra number 38//1/2 (2-9), 38//12/1/1 (1-6), 38//19/1 (5-12), 38//20 (8-0), 38//21 (8-0), 38//22/1 (5-12), 39//15/2/2 (2-7), 39//16/2 (5-12), 39//25/2 (5-12) Kitta 40 area 213 Kanal 3 Marla's 10413/77264 share measuring 28 Kanal 14 Maila land under his ownership and possession was also stated to have with Jalwant Singh. 2. That Jalwant Singh has two sons, the elder one is Palwinder Singh (father of the petitioner) and the younger son is Kanwalpreet Singh R-1. 3. According to the statement of the petitioner, Jalwant Singh's son Kanwalpreet Singh R-1 and the family of Kanwalpreet Singh R-1 were not behaving well due to a domestic dispute. Because of which Jalwant Singh explained to Kanwalpreet Singh R-1 and his family that if your behaviour is not good with him then he will not give any share of his property to them. 4. Upon which on 19-04-2022, the opposite party Kanwalpreet Singh R-1



brought the fictitious person namely Gurbachan Singh son of Hari Singh, resident of village Ghadka Kalan, District Tarn Taran in place of his father Jalwant Singh at the office of Sub-Registrar Amritsar-3. through the fake Aadhaar Card prepared on the name of Jalwant Singh, has got executed the fake power of attorney no. 197 in his favour, regarding the land measuring 28 Kanals 14 Marlas situated in the village Chaudhary wala belongs to Jalwant Singh in his favour and Tarsem Singh Numbardar testified as witnesses and attested the fictitious Jalwant Singh. It is also required to be mentioned here that the abovesaid general power of attorney was written on 18-04-2022 and registered on 19-04-2022 at the office of Sub-Registrar Amritsar-3. 5). During the enquiry, the abovesaid general power of attorney No. 197 executed before the Sub-Registrar, the photograph and copy of the Aadhaar card presented by fictitious Jalwant Singh at the time of execution of power of attorney were obtained from the office of the Sub-Registrar Amritsar-3, his identification was conducted from the respectable persons of village Chaudhary wala, Noshehra Pannua District Tarn Taran, Harpal Singh present Sarpanch. Mukhtar Singh Numbardar. Jatinder Singh Numbardar son of Gurdev Singh, Kulwinder Singh son of Dalip Singh and Manpreet Singh son of Gurdev Singh. Who said that Jalwant Singh son of Ghasita Singh is a resident of his village, but the said general power of attorney and Aadhaar card number 5273 0715 6997, but who stands as a fake person Jalwant Singh. that person is not a resident of this village. 6. Meanwhile, identification of the photo of fake Jalwant Singh and the copy of Aadhaar card 5273 0715 6997 presented in front of the Sub-Registrar Sahib was done from the respectable persons of village Ghadka Kalan, District Tarn Taran, Sarpanch Mandeep Singh and Numberdar Darshan Singh son of Amar Singh, who said that the said General power of attorney and Aadhaar card number 5273 0715 6997, but the person standing as fake Jalwant Singh is the Gurbachan Singh R-6 son of Hari Singh, a resident of their village. Jalwant Singh son of Ghasita Singh is not the resident of his village. 7. During the enquiry of the application, the statement of the respondent Gurbachan Singh R-6 was obtained, who himself admitted in the statement that the photo appeared on Aadhaar Card No. 5273 0715 6997 of



Jalwant Singh belongs to him, he has not put his version regarding the photo taken during general power of attorney No. 197 8. It has been found that 2 days after the above General Power of attorney No. 197 on dated 21.04.2022, on the basis of General Power of Attorney no. 197 dated 19-02-2022, Kanwalpreet Singh son of Jalwant Singh resident of village Chaudhary wala tehsil and district Tarn Taran (R-1) has executed a sale deed of the abovesaid land of Jalwant Singh, measuring 20 kanals 18 marlas by title deed No. 75 in favour of Rajwant Kaur R-2 and remaining land measuring 7 kanals 16 marlas by title deed No. 76 in favour of his nephew Sangrampreet Singh (real brother of the applicant). On the basis of the abovesaid sale deeds, mutation number 3006, dated 28-04-2022 in favour of Rajwant Kaur (R-2) and Mutation No. 3007, dated 28-04-2022 in favour of Sangrampreet Singh (real brother of the applicant) (R-3) have been accepted, Nambardar Tarsem Singh R-4 son of Buta Singh resident of village Chaudhary wala district Tarn Taran and Kulwant Singh R-5 son of Karnail Singh resident of village Chaudhary wala, district Tarn Taran have given their testimony as witnesses on these sale deeds 9. During the investigation it was found that when Jalwant Singh, grandfather of the petitioner Karampreet Singh came to know that his above 28 kanal 14 maria land was acquired by his son Kanwalpreet Singh (R-1) daughter-in-law Rajwant Kaur (R-2) wife Kanwalpreet Singh and grandson Sangrampreet Singh (R3) son of Palwinder Singh has fraudulently transferred the land to his own name by portraying other person in his place, in this regard Jalwant Singh has filed a Civil Suit No. CS-367-2022 before the Hon'ble Additional Civil Judge, Tarn Taran regarding ownership of his share of land and forged General Power of Attorney No. 197 dated 19-04-2022 and against the mutation and sale deeds executed on the basis of General Power of Attorney, which is pending before Sh. Pankaj Verma, Additional Civil Judge (Senior Division) and the next date of hearing is 04.03.2024. The copy of the case in this regard is "attached along with the copy of zimni orders of the Ld. Court. 10. During the investigation, it was found that on 14.02.2023. the witness of the above power of attorney and sale deed, 'Numberdar Tarsem Singh R-4, son of Buta Singh, resident of village



Chaudharywala, district Tarn Taran, and on 04.08.2022, Jalwant Singh, grandfather of applicant Karampreet Singh have passed away. Copy of death certificate is enclosed herewith. 11. That after the death of the victim Jalwant Singh, the abovesaid civil case has been pursued by his son Palwinder Singh, regarding which, the copy of order dated 04.10.2023. of Shri Pankaj Verma Additional Civil Judge (Senior Division) is annexed herewith. 12. Apart from this, an Application UID No. 2403393 dated 01.11.2023 has been submitted by Kanwalpreet Singh R-1 against his brother Palwinder Singh regarding harassment. Regarding this application, statements of Kanwalpreet Singh R-1, Palwinder Singh son of Jalwant Singh and Karampreet Singh C-1 have been obtained. Conclusion Report: From the above facts revealed during the enquiry of the application so far, it has been found that the grandfather of the petitioner Karampreet Singh namely Jalwant Singh son of Ghasita Singh son of Ralla Singh resident of village Chaudharywala, District Tarn Taran owned 28 kanals 14 marlas of land at Village Chaudharywala, Naushehra Pannuan, District Tarn Taran, the opposite party Kanwalpreet Singh (R-1) in connivance with his villagers Tarsem Singh Numbardar (R-4) and Kulwant Singh (R-5) son of Karnail Singh and Gurbachan Singh (R-6) son of Hari Singh, resident of village Gharka, district Tarn Taran, with intent to defraud their father Jalwant Singh (grandfather of the petitioner), by portraying, Gurbachan Singh (R-6) as Jalwant Singh and on the basis of Jalwant Singh's fake Aadhaar card 5273 0715 6997, have executed the fake general power of attorney no.197 on 19-04-2022 regarding land of Jalwant Singh measuring 28 kanal 14 marla, situated in the village Chaudharywala district Tarn Taran, in the presence of Sub-registrar Amritsar-3. In this General Power of Attorney No. 197 dated 19-04-2022, Kulwant Singh and Tarsem Singh Numbardar have testified as witnesses and have verified the fake Jalwant Singh. Thereafter, on the basis of the said fake General Power of Attorney No. 197 dated 19-04-2022, Kanwalpreet Singh (R-1), as a fake Attorney holder, has executed a sale deed dated 21.04.2022 vide vasika no.75 in favour of Rajwant Kaur and executed the sale deed of remaining land measuring 7 Kanal 16 marlas vide vasika number 76 in favour of his nephew



Sangrampreet Singh out of the land measuring of 20 Kanal 18 Maria belongs to his father Jalwant Singh, upon which, on the basis of the abovesaid sale deeds, mutation number No. 3006 dated 28-04-2022 entered on the name of Rajwant Kaur (R-2) and Mutation number. 3007 dated 28-04-2022 "entered in the favour of Sangrampreet Singh (petitioner's brother) (R-3). Numbardar Tarsem Singh R-4 son of Buta Singh resident of village Chaudharywala, district Tarn Taran and Kulwant Singh (R-5) son of Karnail Singh resident of village Chaudharywala, district Tarn Taran have given their testimony as witnesses on both the abovesaid sale deeds. On which, prima facie, offence under Section 419,420,465,467,468,471,34 IPC was found to be made out against the respondent Kanwalpreet Singh (R-1) son of Jalwant Singh resident of village Chaudharywala tehsil and district Tarn Taran, Tarsem Singh Numberdar Numdar (R-4) resident of village Chaudharywala tehsil and district Tarn Taran, Kulwant Singh (R-5) son of Karnail Singh resident Village Chaudharywal. Tehsil and District Tarn Taran and Gurbachan Singh (R-6) son of Hari Singh resident of village Ghadka District Tarn Taran, Tarsem Singh Numberdar (R-4) son of Buta Singh resident of village Chaudhrywal, District Tarn Taran has died on 14-02-2023 and as of now, no concrete allegations have yet surfaced against respondent Rajwant Kaur (R-2) wife Kanwalpreet Singh resident of village Chaudhrywala, Tehsil and District Tarntaran and Sangrampreet Singh (R-3) son of Palwinder Singh resident of Village Chaudhrywala Tehsil and district Tarn Taran, which will considered during investigation. Apart from this, application by Kanwalpreet Singh R-1 UID No. 2403393 dated 01.11.2023 was given regarding harassment against his brother Palwinder Singh. Statements of both parties regarding this application have been obtained. During the enquiry, nothing has come out regarding committing harassment of Kanwalpreet Singh by his brother Palwinder Singh and nephew Karampreet Singh C-1, and the application U.I.D. No. 2398647 dated 19.01.2023, which has been filed by the Karampreet Singh C-1 against Kanwalpreet Singh R-1 etc. regarding committing cheating, in this regard, the allegations levelled against Kanwalpreet Singh R-1 etc. have been proved. The application UID No. 2403393 moved



by Kanwalpreet Singh R-1 appears to be filed in his defence.

15. Recommendation: it is hereby recommended to register a case against respondent Kanwalpreet Singh (R-1) son of Jalwant Singh resident of village Chaudhrywala, Tehsil and District Tarn Taran. Kulwant Singh (R-5) Son of Karnail Singh, resident of Village Chaudharywala Tehsil and District Tarn Taran and Gurbachan A Singh (R-6) son of Hari Singh, resident of village Ghadka, District Tarn Taran under section 419,420,465,467,468,471,34 IPC after obtaining Legal opinion from the legal advisor Police Station NRI. If any other facts are revealed during the investigation, then accordingly Addition/deduction can be done in accused/charges. Report is submitted. Sd/- Inspector Jasbir Singh. Office of Assistant Inspector General Police, NRI Wing. Amritsar, the abovesaid application along with enquiry report is being sent to the office of Assistant Inspector General of Police. 'NRI Wing Amritsar for appropriate, Assistant Inspector General of Police NRI Wing Amritsar while agreeing with the enquiry report, have sent the inquiry report along with the application to Additional Director General of Police NRI Wing S.A.S Nagar vide its office letter number 66-5AP, dated 12.03.2024 for appropriate orders. Vide office letter No. 83031 Nodal Desk-1 NRI Wing dated 26.03.2024 of Additional Director General Police NRI Wing SAS Nagar Punjab, the abovesaid application has been sent to Legal Advisor, NRI Wing SAS Nagar, who while giving his opinion have wrote. Subject Report regarding application UID number 2398647 by Karampreet Singh resident of district Tarn Taran, at present resident of Australia application U.I.D Number 2403393 against Kanwalpreet Singh. Number-141/DA/NRI dated 27/03/2024. Application of applicant Karampreet Singh regarding the subject matter. Investigation report of AIG/NRI Wing/Amritsar dated 12.03.2024 and related records have been perused. Allegations made in the application. The applicant Karampreet Singh in his application has accused the opposing party 1) Kanwalpreet Singh etc. for executing sale deed after preparing fake power of attorney. Recommendation of the investigating officer, IG/NRI Wing/ Amritsar has written in his investigation report dated 12.03.2024 that it is recommended to register case against the respondent party 1) Kanwalpreet Singh 2) Kulwant Singh 3) Gurbachan Singh U/s 419,420,465,467,468.471.34 IPC.



From the facts revealed during the investigation On the basis of the investigation report of AIG/NRI Wing/Amritsar and on the basis of the relevant records, it has come to light that the respondent parties conspired with the intention to defraud their father (grandfather of applicant) Jalwant Singh, during his lifetime, portrayed Gurbachan Singh as Jalwant Singh on 19.04.2022 on the basis of Jalwant Singh's fake Aadhaar card 5273 0715 6997 and prepared a forged General Power of Attorney no.197 regarding 28 Kanal 14 Marla land belongs to Jalwant Singh in village Chaudharywal, District Tarn Taran in the presence of Sub-Registrar Amritsar-3 in their favour. Kulwant Singh and Tarsem Singh Nambardar gave their testimony as witnesses on this general power of attorney no.197 and attested the fake Jalwant Singh. Thereafter, on the basis of the said fake General Power of Attorney No. 197 dated 19-04-2022, Kanwalpreet Singh, as a fake Attorney holder, has executed a sale deed dated 21.04.2022 vide vasika no.75 in favour of Rajwant Kaur and executed the sale deed of remaining land measuring 7 Kanal 16 marlas vide vasika number 76 in favour of this nephew Sangrampreet Singh out of the land measuring of 20 Kanal 18 Marla belongs to his father Jalwant Singh, upon which, on the basis of the abovesaid sale deeds, mutation number No. 3006 dated 28-04-2022 entered on the name of Rajwant Kaur and Mutation number. 3007 dated 28-04-2022 entered in the favour of Sangrampreet Singh (petitioner's brother). Numbardar Tarsem Singh son of Buta Singh resident of village Chaudharywala, district Tarn Taran and Kulwant Singh son of Karnail Singh resident of village Chaudharywala, district Tarn Taran have given their Jestimony as witnesses on both the abovesaid sale deeds. Legal Opinion- According to my opinion if the investigation report of AIG/NRI Wing/Amritsar is based on correct facts, then prima facie offence against 1) Kanwalpreet Singh 2) Kulwant Singh 3) Gurbachan Singh u/ Sections 419,420,465,467,468,471,34 of the IPC are madeot. If any other facts come to light during the investigation, the accused and charges can be increased/reduced accordingly. If it is accepted then the SHO Police Station NRI, Amritsar be directed to register a case. Apart from this, the application UID number 2403393 by Kanwalpreet Singh found to be given in his defence, so the said application required to



consigned in the office. However, the decision taken by you will be final and acceptable. Sd/- District Attorney NRI Wing, on which Additional Director General Police, NRI Wing. SAS Nagar, Punjab after the opinion of District Attorney NRI Wing, vide Report Letter No. 9405 Nodal Desk-1 NRI dated 29.03.2024 received at police station, after legal opinion from the Law Officer regarding the application of Karampreet Singh UID no.16 2398647 dated 19.01.2023, Additional Director General Police. NRI Wing. SAS Nagar passed the order of "Register FIR and investigate as per law" and the application of Kanwalpreet Singh by UID No. 2403393 dated 01.11.2023, has been consigned to office. Upon receiving the same at the police station, after registering the FIR under section 419,420,465,467,468,471.34 IPC against the respondent party 1.) Kanwalpreet Singh son of Jalwant Singh resident Village Chaudharywala, Tehsil and District Tarn Taran 2) Kulwant Singh son of Karnail Singh resident of village Chaudharywala Tehsil and District Tarn Taran 3) Gurbachan Singh son of Hari Singh, resident of Village Gharka, District Tarn Taran, original application, along with enquiry report and copy of FIR is being handed over to ASI Vijay Kumar 2487/Amritsar for further investigation. Senior officials and control room Mohali were informed through wireless. Copy of FIR is being sent to Ilaqa Magistrate for information. Completion rapat number 17 dated 01.04.2024".

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 and there is inordinate delay of 2 years in lodging the present FIR, moreso, there is civil litigation pending between the parties. He has further argued that the investigation in this case is complete and challan has been presented on 10.01.2025 and total 27 PWs are yet to be examined which is sufficient to say that conclusion of the trial will take long time, 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 months and 16 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved in one more FIR 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 months and 16 days and there is inordinate delay of 2 years in lodging the present FIR, 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 10.01.2025 charges are yet to be framed and total 27 PWs are yet to be 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 expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

04.02.2025
anuradha

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