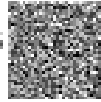


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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-5612-2025
DECIDED ON: 05.02.2025**

KANWAR SINGH**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Kulwinder Singh, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG Haryana

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 483 BNSS, has been invoked for grant of regular bail to the petitioner in case FIR No. 26, dated 19.01.2021, under Section 302 of IPC, 1860 and Section 25 of Arms Act, 1959 (Sections 27 and 29-B of Arms Act added later on), registered at Police Station Ambala City, District Ambala.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of complaint is as under:- To Incharge, Police Post No.2, Ambala City. Sir, it is submitted that I, Apoorav son of Sanjiv Kumar am resident of House No. 1885/53B, Ranjit Nagar, Police station Ambala City. We are two brothers. My younger brother Ayan aged around 19 years, is studying in B.Com. 2nd Year in Dayal Singh College, Delhi. Due to Covid pandemic he is at home since March 2020. Today at around 5.30 pm my on the dual sim

mobile number of my brother in which Sim numbers 9996777440 and 9992497678 are there, his one friend called on one of his mobile number. He went from home saying that he would come after some time and at around 8 P.M. my father called on the phone of my younger brother Ayan and then we received information that somebody had fired a shot at my brother near Pigri Farm, Ambala City due to some enmity and on seeing my brother lying down, one Sushil Kumar resident of Mohalla Ranjit Nagar with the help of others had taken him to Civil Hospital Ambala City where doctor after checking my brother declared him dead. On receiving this information, I with other family members reached Civil Hospital Ambala City where we saw the dead body of my younger brother Ayan on whose forehead there was bullet injury and there was bullet injury near the ear towards right side as well. Somebody has killed my brother due to some enmity regarding which only those friends of my brother can tell who had called him by making a call on his phone that whether they had shot him or some other person. Kindly legal action be taken against the persons who fired shot on my brother. Sd/- Apoorav son of Sanjiv Kumar resident of House No. 1885/53 B, Ranjit Nagar, PS Ambala City. Mob. 9466633200.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that initially the petitioner was not named in the FIR but during investigation on the basis of secret information and call details, the petitioner was arrested and nominated as an accused in the instant FIR. He further submits that the petitioner is in custody since 24.01.2021 and there is delay in trial, as after framing of charges on 20.01.2023 out of total 33 prosecution witnesses only 4 have been examined so far.

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 that during the course of investigation, call details of the mobile phone of deceased and petitioner were obtained and as per the location

of the mobile phone of the petitioner, the same was found to be at the place of occurrence, meaning thereby the petitioner is actively participated in the commissioning of offence.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 4 years and 10 days and is not involved in any 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, charges stands framed on 20.01.2023 and out of total 33 prosecution witnesses only 4 have examined till date, meaning thereby the conclusion of trial shall take sufficient time, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of 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

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