



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7627-2025
DECIDED ON: 17.02.2025

GURPREET SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shantanu Bansal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 of of BNSS, 2023 seeking grant of regular bail to the petitioner in the case of F.I.R No. 155 dated 16.10.2024 (Annexure P-1) under Sections 115(2), 109, 132, 221, 190, 191(3), 304, 61(2) of BNS, 2023 and Sections 25 & 27 of Arms Act, 1959 (Section 135-A of Representation of People Act added in challan and Section 25/27-54-59 Arms Act, 1959 has been deleted in challan) registered at Police Station Baghapurana, District Moga.

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

*“Statement of Ct. Karamdeep Singh No. 5/210/IRB
Headquarter Mall Mandi Amritsar son of Mehnga Singh son
of Harbans Lal resident of House No. B-1262 Bhayian Wali*

Gali Simbal Batala District Gurdaspur age around 30 years mobile: 79738-70581. I state that I am resident of the aforementioned address on date 23.11.2016 I was enrolled in police Commando as a Constable. On date 13.10.2024 I was deployed on election duty at Moga on 14.10.2024 I was deployed for patrolling in the villages Rajeiana, Kola Mehar Singh Wala, Budh Singh Wala, Chanu Wala etc of of Bagha Purana Sub Division. In this patrolling party ASI Narinder Singh No. 2722/PAP, Sr. Ct Kamaldeep Singh No. 727/Moga were accompanying me. The in-charge of our patrolling party was Inspector Harjit Kaur. For patrolling a private vehicle was allotted to us. On date 15.10.2024 when our patrolling party was present at village Budh Singh Wala government Elementary School at that time the gate of the school was closed. I was outside the gate. It was around 12:45 AM dated 16.10.2024. The employees deployed on election duty, after finishing their duty they started boarding the bus. Then a person inside the school, Gurpreet Singh s/ o Darshan Singh r/o Budh Singh Wala who had lost the village Sarpanch election and another person accompanying him was Gurpreet Singh s/o Joginder Singh r/o Budh Singh Wala, then Gurpreet Singh s/o Darshan Singh I/o Budh Singh Wala who had lost the village Sarpanch election both of them in connivance with each other made a phone call to their group of 60- 65 persons standing outside the gate and incited them to make a rucks in front of the bus so that we can get the elections cancelled by hooliganism. The group of 60-65 persons standing outside, immediately on received a phone call started sloganeering, they were in possession of fire arms also. I asked them to refrain from such hooliganism. The employees closed the gate from inside. I started to make these unidentified people to understand then all the unidentified persons started misbehaving with me. Then I quickly threw my AR-47 rifle inside the school premises. I shouted loudly to save my rifle and in a bid to save myself I ran away from there. Then an unidentified person caught hold of me and with an intention to kill me started beating me. He attacked me on my right

bicep, head, eye and my back-side. I started shouting loudly, in the meantime I heard sound from inside the school premises of gun shots. Then the unidentified persons, swiftly tore my uniform, snatched my wallet from my pocket and challenged me and ran away from the site of incidence. My wallet was containing around an amount of Rs. 40,000/- (Rupees forty thousand), Identity card, Aadhar card and ATM card. I was shouting loudly. Then the police party appeared at site of incidence which included Inspector Harjit Kaur also. They took me to Garg Hospital Bagha Purana and got me admitted there. I am undergoing medical treatment there. The cause of enmity is that Gurpreet Singh etc. had lost the village Sarpanch elections. They wanted to stop the bus of polling station employees, misappropriate the votes from this bus and to get the elections cancelled. I stopped them from doing this. Then with an intention to kill me they beat me. They created hurdles in my official duty. They tore my uniform and snatched my wallet. I legal action be taken against all of these persons.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the instant FIR was got registered against the petitioner out of political vendetta. He further contends that no specific role or injury has been attributed to the petitioner, who has been roped in the instant FIR due to his association with a political party during the Sarpanch election. It has been further contended that the petitioner is not involved in any other case meaning thereby he is not a habitual offender. He asserts that the challan stands presented to Court on 07.12.2024 and the petitioner is in custody since 16.10.2024.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner has fired in the air but could not controvert the fact that no injury was caused due to aforementioned aerial discharge, the same has been denied by the learned counsel for the petitioner.

4. Analysis

Be that as it may, considering the custody period i.e. 03 months and 29 days for which the petitioner has suffered incarceration; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate; the instant FIR was got registered against the petitioner due to political vendetta in addition to the fact that investigation is complete, challan stands presented to Court on 07.12.2024, charges are yet to be framed and prosecution witnesses are yet to be examined, 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. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his 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.

17.02.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No