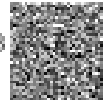


2025.PHHC:025608



223

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

**CRM-M-9000-2025
DECIDED ON: 21.02.2025**

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

Present: Mr. Amit Arora, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

Mr. Vikas Gupta, Advocate for the complainant.

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

The jurisdiction of this Court under Section 483 of BNSS, 2023, has been invoked seeking regular bail to the petitioner in case FIR No. 0233, dated 17.11.2024, under Sections 103(1), 190, 191 (3) of BNS, 2023, and Section 25(6) of Arms Act, 1959, registered at Police Station Jhabhal, District Tarn Taran (Sections 61(2) and 351(2)(3) and 249 of BNS added later on).

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

“Statement of Baljinder Singh son of Pratap Singh Sarpanch, resident of Lahu Ghuman, Police Station Jhabhal, district Tarn Taran, aged about 46 years, Mob. No. 8847472305, stated that I am a resident of the above mentioned address and I am engaged in agriculture. Today, on 17.11.24, my

father Pratap Singh Sarpanch son of Gian Singh, resident of Lalu Ghuman, aged about 75 years, had come in the morning to attend the Bhog ceremony of deceased mother of Bhagwant Singh son of Mahinder Singh, resident of Lalu Ghuman. After the Bhog ceremony was completed, after having prashada (meal), my father Pratap Singh Sarpanch along with his companion Budh Singh son of Kalyan Singh, resident of Lalu Ghuman, had just left the house where bhog ceremony was held to take his motorcycle from the house of above said Budh Singh, on the way, it must have been around 1:30 pm when an unknown person with 2 pistols came on his motorcycle and started shooting at my father. My father Pratap Singh Sarpanch fell on the ground where a bullet hit in the leg of Budh Singh. In the meanwhile, Bhagwant Singh son of Mahinder Singh, resident of Lalu Ghuman in whose house the bhog ceremony was held regarding his deceased mother, along with other persons came forward who was also shot by the unknown persons. And all this was done for the Sarpanchi Election of my father Pratap Singh Sarpanch by the opposition party's Bikramjit Singh son of Wassan Singh, Nishan Singh son of Desa Singh, Ranjit Singh son of Jaswant Singh, Desa Singh son of Sulakhan Singh, Balram Singh son of Harbhajan Singh, resident of Lalu Ghuman. They have been calling us since the Sarpanch election with threats through Amritpal Singh resident of Miapur. Along with them Ranjit Singh I Rana son of Wassan Singh, resident of Lalu Ghuman, presently in Canada, has been threatening us over the phone since the election that they will not be allowed to stay in the village. While the unknown person was leaving, a pistol fell on the ground from their custody, which was taken by your good self in your possession. My father Partap Singh, Sarpanch had died at the spot due to gunshot. And Budh Singh son of Kalyan Singh was taken to the hospital for treatment. Strictest action should be taken against the above- mentioned persons who shot, planned and killed my father. Justice be given for the murder of my father. I, Budh Singh and Bhagwant Singh have seen this whole incident with our own eyes, statement has got been recorded, read over and is accepted as correct. SD/- Baljinder Singh, Verification/- Paramjit Singh INSP/ SHO Police Station Jhabal dated 17.11.24.”

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 due to existing party faction in the village as the petitioner belongs to the opposite party. He submits that the

petitioner is having dispute regarding agriculture land with the complainant. He further submits that similarly situated co-accused have also been granted concession of anticipatory bail vide orders dated 13.01.2025 & 28.01.2025 & 06.02.2025 (Annexures P-1, P-2 & P-3) passed in (CRM-M-1119-2025 & CRM-M-4642-2025 & CRM-M-6876-2025) respectively, and he seeks parity with him, therefore, prays for grant of anticipatory bail to the petitioner.

Notice of motion.

On behalf of the State/complainant

Learned State counsel does not controvert the submissions made by learned counsel for the petitioner with regard to the fact that the petitioner is at par with his co-accused persons namely Nishan Singh, Ranjit Singh and Bikramjit Singh, who have already been enlarged on bail by this Court.

Learned counsel for the complainant accepts notice on behalf of respondent/State. He prays for dismissal of the present petition on the ground that bail application of one co-accused namely Balram Singh, was dismissed vide order dated 16.01.2025 passed in CRM-M-63198-2024.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 2 months and 28 days, wherein investigation is complete, challan stands presented on 14.02.2025, charges are yet to be framed and total 22 prosecution witnesses are cited by the prosecution for examination. This Court is sanguine of the fact that conclusion of trial shall take considerable 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.

21.02.2025

Anuradha/Meenu

(SANDEEP MOUDGIL)
JUDGE

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