



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9925-2025
DECIDED ON: 25.03.2025

SHIV KUMAR ALIAS SONU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunil Kumar Nehra 'Sirsa', Advocate
for the petitioner.

Mr. B.S. Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 BNSS for grant of regular bail in case FIR No. 117 dated 25.04.2024, U/s 148, 149, 323, 325 and 506 IPC (201 and 307 IPC added later) P.S.Khol, District Rewari (Annexure P-1).

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

“To, Incharge, Police Post, Kund, Police Station, Khol, Rewari, Sir, it is requested that I, Dharmender son of Rohtash, am a resident of village Manethi, Police Station Khol, District Rewari. Today at about 2:30 p.m., I, Shubhan son of Krishan, and Vedpal son of Ramesh, all residents of Manethi, were sitting at the service station of Vedpal and were having a conversation. Then, suddenly, one Bolero Camper was driven, the color was white, had no number in the front or rear, and

on the rear windshield the word Hindu was written. The vehicle was driven by Harender, a resident of village Ateli Begupur, who was driving at that time, stopped the vehicle near us, from which alighted Sandeep alias Mama, Khairana (Mahendergarh), Suraj, a resident of village Dhani Kolana, Ankil village, Padla, Neeraj son of Nityanand of Manethi, Jitender @ Jita Gurjer of Kund, and Sonu, who is studying in Iti Kund and two or three youths whose names I don't know. All of them alighted from the camper vehicle, armed with cannons and sticks and started beating us brutally. Hearing the noise of a fight nearby, shopkeepers and people from our houses came to the spot. Then, accused Harender made a circle in my plot with the above-said vehicle and came back. With the intention of killing us, the accused Harender trampled Vedpal and one of their boys, Ankit, and also hit the motorcycle. They fled towards Behrod Road. Then they threatened that we would escape, but we would kill you when we got the chance. When people from our family chased them and stopped the vehicle on Behrod Road, they found the number HR66C 7593, and they, all trying to run into us, ran towards Behrod Road. This entire incident was recorded on the CCTV cameras of Anamika Auto Parts, which is renting Vedpal's shop at Kund Barrier. When we inquired at our level then we came to know that this incident occurred at the instance of Pankaj Dhir son of Ashok resident of village Manethi therefore it is requested that all the above said accused be arrested and strict action be taken against them.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is a part of unlawful assembly but no overt act has been attributed to him and neither any injury has been attributed to him. He further contends that the investigation in the instant FIR is complete, challan stands presented to

Court on 24.07.2024 and charges have been framed on 03.03.2025. It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

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 along with his co-accused persons, formed an unlawful assembly and attacked the complainant and injured Shubham and Vedpal and had crushed the injured Vedpal beneath the tyres of Bolero Camper. This incident resulted in as many as eight injuries to Vedpal, including damage to his brain, a facial bone fracture, and a spinal cord fracture. The doctor has explicitly stated that these injuries were life-threatening, thereby indicating that the petitioner has committed a grave and heinous offence.

4. **Analysis**

Be that as it may, considering the custody period i.e. 10 months and 15 days for which the petitioner has suffered incarceration; no overt act or any injury has been attributed to the petitioner; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 24.07.2024, charges have been framed on 03.03.2025 and out of total 22 prosecution witnesses none has been examined so far, 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 Nimesh 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. **RELIEF:**

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

25.03.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No