



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

208

CRM-M-11256-2025

Date of decision: 07.03.2025

Harinder Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

Mr. Jaspal Singh Guru, AAG, Punjab.

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

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail for the petitioner in FIR No.260 dated 18.12.2024 under Sections 318(4)/338/336/340(2)/61(2) of BNS, 2023 registered at P.S City Jagraon, District Ludhiana.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ No. 3014 Dated 17.12.2024 From Sh. Manpreet Sohi, PCS Judicial Magistrate 1" Class, Jagraon. Incharge, Police Post, Bus Stand Jagraon. Sub: Regarding verification of bail bonds. Today, the case titled as Jawahar Lal Vs. Harinder Sharma bearing CiS No. 410/2024 was listed in the Court of Undersigned. Accused Harinder Sharma along with his counsel Sh. Bikrampal Binder, Advocate appeared and moved an application for surrender and bail. Since, the offence was bailable in nature, he was directed to furnish bail bonds in the sum of Rs. 1 lac with one surety. Thereafter, he has presented the bail bonds and surety bonds in



which Harpal Singh s/o Bachan Singh of village Gaunspur stood as his surety and he was identified by Gurpreet Singh s/o Blvir Singh. However, reader of this court informed the undersigned that the Adhar card of Gurpreet Singh has not been verified. When the undersigned has asked the said witness to appear in court, he fled away from the court. Therefore, the bail bonds coupled with the revenue record and Adhar card of persons appears to be doubtful. Accordingly, you are hereby directed to verify the above said fact and if the bail bonds and surety bonds found to be false, then to register an FIR as per law. You are further directed to submit your report within 15 days from today. Photocopies of Adhar cards and revenue record are annexed herewith. ”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. Present case is entirely based upon documentary evidence and all the documents are either with the police or with the trial Court and nothing is to be recovered from the present petitioner. Investigation is complete and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as charges have not yet been framed.

On behalf of the State

4. The 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 02 months and 12 days. Challan was presented in this case on 15.02.2025 and the matter is fixed for framing of charge.

Analysis

5. Be that as it may, looking at the nature of offence which would not entail with further investigation and considering the fact that nothing is to be



recovered once the investigation stands concluded and that the petitioner has suffered sufficient incarceration for almost 02 months and 12 days, challan stands presented on 15.02.2025 and charges are yet to be framed, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 ReInhuman 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.”*

6. 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 as 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 Khatoun and ors (IV) v. Home Secretary, State of**



Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that the 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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of BNSS, 2023 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.

**(SANDEEP MOUDGIL)
JUDGE**

07.03.2025
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- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No