



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

240

CRM-M-12515-2025

Date of Decision : **March 11, 2025**

MONU MALIK

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. G.C.Shahpuri, Advocate for the petitioner.
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J. (Oral)

1. This petition has been filed under Section 483 of BNSS of 2023 for grant of regular bail to the petitioner in FIR No.599 dated 3.12.2010 under Sections 395, 397, 398, 201 IPC and Section 25/54/59 of the Arms Act, registered at Police Station City Yamuna Nagar, District Yamuna Nagar (Initially FIR was under Sections 395/398 IPC, however, later on other offences have been added in the challan).

Facts

2. Facts as emerging in the FIR read as under:-

“Contents of the writing are as under-Statement of Manish s/o Sh. Yashpal Aggarwal, caste Baniya, resident of H. No.E-21, Factory Area, Yamuna Nagar. It is stated that I am the resident of aforementioned address and doing the business of ply. In my house, my mother Rama Aggarwal, my wife Sheetal Aggarwal, two children namely Yogesh Aggarwal and Praksha Aggarwal and one maid namely Roopa Mahato, aged about 19 years @ Tara d/o Kantki Mahto, resident of Shahdi Nagar, Police Station Basanti West Bangal are living. The said maid was hired

from Delhi through Vouesh before one year ago. Today at about 8:30 PM, I was strolling in the main hall after having food and our maid was in the outside courtyard. My mother namely Rama Aggarwal was also present near the door of the outside room. In the meantime, I noticed that three persons carrying bundle (Patly) in their hands, entered in the courtyard and after entering they caught hold our maid immediately and started pulling her inside. He immediately started raising alarm and said you can take anything whatever you want, however do not hurt us. However, during this, they both gave bundle (Patly) blow carrying in their hands to our maid Roopa Mahato and one of both gave bundle blow to my mother and she received injury on her finger and mouth. At the same time, I also raised alarm and made a telephonic call to our factory. Since the factory is situated in the house and after hearing the noise the labourer immediately came while making noise. On hearing the noise, the said person immediately fled away towards outside after causing injury to my mother and maid. I ran after them and saw that there were two more persons there too and the said persons fled away after sitting in car. I noted down the registration number of Car which was DL3CU-5128 Marka Indica silver colour. I made my servants run after the car and I took care of my mother and maid on coming inside. The maid had received grievous injuries on her head, chest and stomach. I made her sit in car and took her to Jindal Hospital, Sector-17, HUDA, Jagadhri for treatment and she was got admitted there. All the said five persons in pants and shirts and they were about 25-30 years of age. I can identify them if they are brought before me.”

3. **Submissions of the petitioner**

4. Counsel for the petitioner has submitted that the petitioner has been wrongly implicated in the present case on the basis of disclosure statement of co-accused, namely, Pankaj @ Kallu and the recovery was

effected from his co-accused. He further submits that the complainant has been examined as PW1, who turned hostile. He also submits that the petitioner has been arrested in this case on 18.10.2023 almost after 10 years of the alleged occurrence and after completion of investigation, the challan was presented on 24.1.2024.

Stand of the State

5. On the other hand, 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. He further submits that the petitioner is an habitual offender, who is involved in various other cases, therefore does not deserve the concession of regular bail.

Be that as it may, considering the fact that the petitioner has already suffered sufficient incarceration of 1 year, 4 months and 20 days as on today and after framing of charges on 12.2.2024, out of total 30 witnesses only 5 have been examined so far, which is sufficient for this Court to infer that the conclusion of the trial shall take considerable time. 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

In light of the above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

March 11, 2025
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No