

2025:PHHC:037716



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

CRM-M-13736-2025
DECIDED ON: 19.03.2025

ANKISH

....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sanjiv Kumar Aggarwal, Advocate
Mr. Tejas Bansal, Advocate and
Mr. Nissim Aggarwal, Advocate
for the petitioner.

Mr. S.S. Pannu, Addl. AG, Haryana.

Mr. Sanpreet Sandhu, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023, for grant of Regular bail to the petitioner in FIR No. 274, dated 23.12.2024, under Section 25 Arms Act and Sections 109(1), 115, 190, 191 (3) and 351(3) of BNS, registered at Police Station Farakpur, District Yamuna Nagar.

2. Facts

The brief facts of the prosecution case are that on 22.12.2024, a message was received with regard to admission of Rohan S/o Jagan, R/o Sunder Vihar Colony, P.S. Farakpur, in Civil Hospital, Yamuna Nagar, with a fire arm injury. On the basis of this information, SI/SHO alongwith

P/SI Randeep Singh, HC Sandeep Kumar, HC Anil Kumar and other police officials reached at the Hospital. There the doctor opined the patient unfit to make the statement. Thereafter, SI/SHO after taking one Satya S/o Ram Sewak present there visited the place of occurrence and inspected the same. On 23.12.2024, he recorded the statement of Rohan, who stated that he was resident of H. No. 64, Sunder Vihar Colony, Yamuna Nagar. His elder brother Rohit was working in a Cafe. He had friendship with Sagar for the last 6/7 years. One Dev Sexena used to sent message to the daughter of Bua of one Arjun and because of this, a confrontation was going on between Arjun, Sunny with one Dev Sexena. A quarrel also took place between them on 21.12.2024 in this regard. On 22.12.2024, when he alongwith his friends Ravi, Yash, Sagar, Vishesh, Sumit, Amit @ Roshan, Abhay and Rohit was present at the house of Rakesh for celebrating the birth day party, there a phone came to Sagar from Dev Sexena. On receiving this phone, Sagar and Sumit went to meet Dev, to have a talk with Sunny, Arjun and their friends with regard to their pending dispute, Thereafter, the complainant received a call of Sumit, who asked him to take him from Sasoli Village, He brought Sumit and Sagar on the motor cycle belonging to Ritesh. After some time, Sagar, Sumit called their friends Ravi and Vishesh alongwith other friends. They all went to Sasoli to have a fight with Sunny and his friends. He alongwith his friend Vishesh also went there and found that a fight was taking place between Dev Sexena, Sumit, Sagar, Sunny, Arjun and their friends. They were throwing bricks and stones on each other and were abusing each other. They were also extending threats to kill each other. On seeing the fight getting momentum, they tried to skip from there. In between, some one fired a bullet and the same hit him on his left thigh. On the basis of this complaint, formal FIR under Sections 109(1), 191(3), 190, 115(2), 351(3) and of BNS and section 25

of Arms Act, 1959 was registered. The place of occurrence was inspected by the Scene of Crime Team. Statements of witnesses were recorded. During investigation, Sagar, Sumit, Dev Sexena, Mandeep and Lovepreet @ P.K. were produced by their guardians. Sagar, Dev Sexena, Mandeep Singh and Lovepreet Singh @ P.K. were found juvenile. The place of occurrence was got demarcated on basis of their confessional statements. CCTV footage of the area was got obtained. In their confessional statement, accused Arun and Sagar (child-in-conflict with law), disclosed that a country made Pistol was in possession of accused Ankish and it was he, who used that fire arm and had fired gun shots to kill Arjun and Sunny. Present accused Ankish was arrested in the present case on 22.01.2025 and his confessional statement was recorded.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the petitioner and the complainant are first cousins and a compromise stands effected between the parties. The said facts has not been disputed by the counsel appearing for the complainant.

On behalf of the respondent-State

On the other hand, learned State Counsel appearing on advance notice, has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for the last 1 month and 26 days.

4. **Analysis**

Considering the fact that a compromise has been effected between the parties otherwise also petitioner is not involved in any other case of any nature whatsoever, meaning thereby, he is not habitual offender, this Court is of the view

that no fruitful purpose would be served by keeping the petitioner behind the bars.

Moreover, investigation is completed and challan stands presented on 21.02.2025.

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 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 directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/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

19.03.2025

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No