



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14930-2025
DECIDED ON: 03.04.2025

GANESHI LAL

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. M. R. Sharma, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of The BNSS, 2023 for the grant of Regular Bail to the Petitioner in FIR No.425 dated 06.10.2024 (Annexure P-1) registered under Sections 109(1) and 3(5) of BNS and Section 25 of Arms Act, 1959 (Section 238, 61(2) BNS and Section 25 Arms Act, 1959 added during investigation) registered at Police Station Kheripul, District Faridabad, Haryana.

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

*“To the SHO, Kheripul, Police Station: Faridabad.
Subject:- Regarding attempt to murder and shooting. Sir,
I request that I, Jai Singh son of shri Ram Avadh Singh is
the permanent residence of H.No 2, Street No.3, 35
feet Road, Bharat Colony. That today on 05.10.2024, I*

and my family went to Nidhi School located at Kacha way to cast vote and after casting, we return to our homes and my son Rajneesh stayed there. Around 4-5 pm, Rajneesh told me that a little while ago, to remove the table and due to election rivalry, Dan Singh @Dani, Shri chand Gautam, Kamal Saurat, captain R.P. Prasad, nephew of Jeetu Dani and 10-15 other people tried to fight with me and left from there after threatening to kill me. While leaving, they said that Lakhan Singla is supporting us and he has said that no matter, who we have to kill, don't be afraid this election has to be won in any case. So, all the people present over there send them away after understanding. After about 2-2.5 hours, I got the information that your son Rajneesh has been shot by the same people with whom he had a fight in the evening and the people present over there had taken him to the hospital. After getting the information, i reached the hospital and found out that the people whose names, Rajneesh Had mentioned during the day had committed this incident under conspiracy. So, I request you to take strict action against the people and their 10-15 other companions and provide us security. It will be highly thankful to you.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not initially named in the instant FIR but was subsequently roped in only on the basis of disclosure statement of co-accused Manish Rawal. He further contends that no overt act has been attributed to the petitioner which could attract Section 109(1) of BNS, 2023. It has been contended on behalf of the petitioner that he has suffered incarceration for a period of 04 months

and 22 days, wherein challan stands presented to Court on 24.01.2025 and charges are yet to be framed.

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 along with Mr. Ram Bilas Gupta, Advocate has put in appearance on behalf of the complainant, who filed his *Vakalatnama*, which is taken on record, seek dismissal of the instant petition on the ground that the petitioner has not approached this Court with clean hands as he is involved in another case which he did not mentioned in the present petition.

In counter, learned counsel for the petitioner has demonstrated a lack of awareness regarding the fact that he is involved in other cases, since the petitioner is currently incarcerated, therefore, he could not get proper instructions from his client regarding this very fact.

4. **Analysis**

Be that as it may, considering the fact that he was named on disclosure statement and custody period i.e. 04 months and 22 days for which the petitioner has suffered incarceration and Moreover, even if there is a pending FIR in another case, this should not be a considering factor for the Court while dealing with the present petition. The Court should focus solely on the facts and evidence of the current FIR when deciding the regular bail application, without relying on material or evidence from any other FIR in which the petitioner may be involved. Otherwise also, the petitioner is stated to be on regular bail in that FIR bearing No.830 dated 25.10.2024, as is evident from custody certificate filed today in Court by learned State counsel.

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 land the petitioner in a situation of denial of concession of bail.

Also, considering the fact that investigation is complete, challan stands presented to Court on 24.01.2025, charges are yet to be framed and total 36 prosecution witnesses have been cited, 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 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. **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.

03.04.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No