



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15419-2025
DECIDED ON: 07.04.2025

AKBAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanawar Ali, Advocate for
Mr. Nafeesh Ahmed, 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 of BNSS for grant of regular bail to the petitioner in FIR No.195, dated 17.11.2023, under Sections 148, 149, 323 & 506 of IPC, (Sections 148, 149, 323, 406 & 302 IPC mentioned in impugned order P-2), registered at Police Station Bichor, District Nuh, Haryana (Annexure P-1).

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

"To, the SHO, Police Station Bichhor. Subject: TO take legal action against the accused 1.) Akbar son of Sarwar, 2.) Nur Mohammad son of Sarwar, 3.) Sajid son of Noor Mohammad, 4.) Asfaq son of Noor Mohammad, 5.) Samaydin son of Akbar, 6.) Sahru son of Akbar, all residents of Village Neemka, Police Station Bichhhor, District Nuh. Sir, it is request that I,

Jamshed son of Hasan Mohammad, resident of Village Neemka, Police Station Bichoor, District Nuh. Two days ago here was an altercation with the above mentioned accused regarding partition of land and on that day they threatened to teach a lesson. On 04-11-2023, my father Hasan Mohammad was going towards the fields for watering, on the way, the house of the accused is situated. As soon as my father reached near the house of the accused, all the accused consultation with each other, were already standing with sticks and axes and suddenly they all attacked upon my father and Sajid hit the axe on the right eye of my father, Akbar having stick in his hand and hit on the left hand of my father and all the accused thrown my father on the ground and Samaydin gave a stick on the head of my father, Asfaq gave a stick on the stomach of my father and Sahru gave kicked on the stomach of my father and when my father was lying on the ground. Accused Sajid picked up a stone lying there and hit on stomach. I was following my father then I saw that all the accused were beating my father. Somehow I and my wife saved my father from the accused persons, while leaving they said that today they have let your father go, next time if they get a chance they will kill him. My father's condition worsened, then we took my father to hospital at Punhana, the doctor there seeing his serious condition referred him to Nalhar, there also the doctor seeing his serious condition referred him to PGI where my father is undergoing treatment, till now we were busy with my father's treatment in Rohtak. Sir, it is requested that strict legal action should be taken against the accused and justice should be deliver to us.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that there is an inordinate delay of 14 days in lodging the instant FIR as the occurrence took place on 04.11.2023 whereas FIR was registered on 17.11.2023. He further

contends that as per the prosecution story, the allegation against the petitioner is that he gave a stick blow on the left hand of the deceased, however, learned lower court rejected the petitioner's bail solely on the grounds of serious murder allegations against him, whereas, the cause of death, as stated in the post-mortem report, was "intestinal perforations and its complications," which indicates that the elements of the offence under Section 302 IPC are not made out against the petitioner. Moreover, as per the MLR, the deceased Hasan Mohammad received only 3 injuries, none of which have been declared dangerous to life. 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/complainant

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. Talim Hussain, Advocate, who has put in appearance on behalf of the complainant and has filed *Vakalatnama*, which is taken on record, seek dismissal of the instant petition on the ground that there are serious allegations against the petitioner for committing murder of the deceased Hasan Mohammad.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 01 month and 13 days for which the petitioner has suffered incarceration and the fact that the cause of death of the deceased, as stated in the post-mortem report, was "intestinal perforations and its complications," which indicates that the elements of Section 302 IPC are not made out against the petitioner and moreover, as per the MLR, the deceased Hasan Mohammad received

only 3 injuries, which have not been declared dangerous to life and also, there is an inordinate delay of 14 days in lodging the instant FIR.

Also considering the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate and the fact that investigation is complete, challan stands presented to Court on 19.04.2024, charges have been framed on 04.10.2024 and out of total 19 prosecution witnesses only 01 witness 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 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.

07.04.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*