



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16312-2025
DECIDED ON: 28.03.2025

ASHRAF ALI @ KHURIAN WALA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shubham Chandel, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for releasing the petitioner on regular bail in case FIR No.42 dated 25.06.2024 under Sections 307, 379-B, 506, 148, 149, 120-B IPC, 1985 (Section 323,324,325, 326 and 201 IPC, 1860 added lateron) Police Station Sadar Ahmedgarh Malerkotla, District Malerkotla (Annexure P-1).

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

“Copy of the original statement: Kulwant Singh, son of Darbara Singh, resident of Baroikla, Police Station Sadar, Ahmedgarh, aged about 42 years, mobile phone number 98722-92554. It is stated that I am a resident of the said address and doing agricultural work. On June 23, 2024, between 4:30 and 5:00 PM, I had completed plowing my

fields at the village of Baroikla, picked up my motorcycle from my engine, and started toward my home. Then, I saw four unknown young men, aged between 20 and 25, with slim and swift bodies, riding two motorcycles. Three of the young men had iron rods, and one was a young Sikh. The one with a long beard had a kirch, whom I can identify in person. As soon as they saw me, they got off their motorcycles and four unknown youths caught hold of me and threw me down from the motorcycle and all of them firstly snatched my mobile phone from my hand, in which SIM number 98722-92554 was in operation, the three unknown haircut boys hit me with the iron rods they held in their hands with an intention of killing me, while I was down which hit on my head, left leg, right leg and left ankle, due to which my right leg was broken and my left leg was injured. I shouted for help then these four young boys threatened to kill me that today he may not be spared and his minor bridges of blocking will be made. The unknown Sikh young man stabbed me three times with his knife with the intention of killing me, on my right knee, right elbow joint, and right lower leg, and I was instantly half dead. Then these four unknown young men started saying that today his work is done. Then one of three young boys gave his iron rod blow to my head with the intention of killing me, and I raised my right hand to save myself, and the iron rod hit the fingers of my right hand. One hit my back with the iron rod, and one hit my left leg and right cheek twice in a row. Then these four young men hit me with their weapons and fled away from the spot on their own motorcycles. After the left, I got a little conscious, so I shouted for help. Then, on hearing my noise, my worker, Jagdev Singh, son of Major Singh, a resident of Maholi Khurd, who was working in the field some distance away behind the wall of shellers in the field, came to the spot. Two of them, I told to bring a vehicle from the village. After a few minutes, he came by vehicle along with Gurjit Singh, a resident of Baroikla, who took me first to Civil Hospital Malerkotla for treatment, and then they referred me to Rajindra Hospital Patiala. Then, from Patiala, I was referred

to PGI Chandigarh, but I was admitted to DMC Ludhiana, where my treatment is going on. I was beaten up by my uncle's son, Iqbal Singh, son of Harchand Singh, a resident of Baroikla, in a conspiracy with four unknown youths because this year I have started cultivating my own land and I am getting more water from the motor and I have already leased my land. In addition to this, Iqbal Singh had a fight with me some time back. Because of this, he has been beaten in collusion with unknown young boys. Legal action may be taken against them. Today I have recorded my statement for you at DMC Ludhiana. I have read it and it is correct."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, iron rod blow was attributed to the present petitioner on the left leg of the complainant. He further contends that the injury attributed to the petitioner is on non-vital part of the body, therefore, ingredients of Section 307 IPC prima facie is not made out against the petitioner. It has been further contended that co-accused Gurdeep Singh, Iqbal Singh and Dilpreet Singh have already been granted the concession of regular bail or anticipatory bail by this Court vide orders dated 16.01.2025 (Annexure P-4), 26.07.2024 (Annexure P-3) and 03.02.2025 (Annexure P-5) passed in CRM-M-64900-2024, CRM-M-35463-2024 and CRM-M-5142-2025, respectively.

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 seeks dismissal of the instant petition on the ground that the petitioner along with his co-accused persons is alleged to have assaulted the

complainant party with an intention to kill them and have forcibly snatched many articles from them. He further contend that the injury attributed to the petitioner is an iron rod blow on the left leg of the complainant.

4. **Analysis**

Be that as it may, considering the custody period i.e. 08 months and 19 days for which the petitioner has suffered incarceration; the injury attributed to the petitioner is on non-vital part of the body, therefore, ingredients of Section 307 IPC prima facie is not made out against the petitioner; co-accused Gurdeep Singh, Iqbal Singh and Dilpreet Singh have already been granted the concession of regular bail or anticipatory bail by this Court vide orders dated 16.01.2025 (Annexure P-4), 26.07.2024 (Annexure P-3) and 03.02.2025 (Annexure P-5) passed in CRM-M-64900-2024, CRM-M-35463-2024 and CRM-M-5142-2025, respectively and 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 in addition to the fact that investigation is complete, challan stands presented to Court on 24.09.2024, charges have been framed on 19.03.2025 and out of total 17 prosecution witnesses none 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.

28.03.2025*Poonam Negi***(SANDEEP MOUDGIL)
JUDGE***Whether speaking/reasoned
Whether reportable**Yes/No
Yes/No*