

2025.PHHC:043412



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

**CRM-M-15653-2025
DECIDED ON: 01.04.2025**

PRABHJOT SINGH ALIAS PRABH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Shruti Sharma, Advocate and
Mr. I.S. Kooner, Advocate
for the petitioner.

Mr. Gautam Thapar, AAG Punjab

Mr. Ranwant Singh Sangha, Advocate for
respondents No.2 & 3.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked for the 3rd time under Section 483 BNSS, 2023 seeking regular bail to the petitioner in FIR No.48 dated 28.04.2024 under Sections 307, 323, 324, 148, 149 of IPC and Section 326 of IPC added later on registered at Police Station Division No.7, Police Commissionerate District Jalandhar (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Ashu wife of Late Bala, resident of House No.72, Near Pandit Karyana store, Kharada Wali Gali, Phagwari Mohalla, Garha, Jalandhar, aged about 38 years, M.No.98784-86172. Stated that I am resident of abovesaid address and I am having two sons, among them, name of elder son is Aman alias Gosha, aged about 17 years and who after leaving study as he failed in 9th class last year, was residing in the house. Yesterday on 27.04.2024 at about 6.00 p.m. to 7.00 p.m., I alongwith my son Aman was coming to my house after worshipping in Geeta Mandir and alongwith us, Harsh son of Mukesh Kumar, resident of Tara Chand Colony Garha was also coming. My son Aman and Harsh were going ahead and I was coming behind them. When my son Aman and Harsh reached in front of the shop of Dr. Bhardwaj, Mohalla Balimk Garha, Jalandhar then from backside, Veeru, Kamal alias Mitha, Arun, Prabh, residents of Tanki Mohalla Garha Jlandhar and Smiley alongwith 6-7 unidentified youngsters on various motorcycle and Activa number of which I could not read came there. Among them, Veeru gave datar blow on the head of my son Aman with an intention to kill. My son raised his left hand in order to save and datar blow of Veeru hit on his left hand. In meanwhile, Aman alias Mitha, Prabh and Smiley gave khandia blow on the head of my son with an intention to kill, due to which my son fell down on the ground. On seeing this entire incident, Harsh for saving himself ran away from the spot from the streets. Arun alongwith his 6-7 unidentified persons gave datar blows from reverse side to my son while he was lying down and gave beatings with baseballs. I raised alarm loudly mar ditta mar ditta. Then on seeing gathering of the people, above mentioned all the assailants ran away from the spot with their respective weapons on their vehicles while giving threats. On seeing all this, I started feeling dizzy. On that, my mother Surjit Kaur arranged a conveyance and rushed me and my son Aman to Civil Hospital, Jalandhar. Due to much injuries, doctor prepared my MLR and gave treatments and In meanwhile, I also reached at Civil Hospital. Doctor said that my son received many injuries and his condition is critical and asked me to send him at some other hospital. On that, my mother arranged an ambulance and took my son Aman to NHS Hospital, Kapurthala Road, Jalandhar and got him admitted there. Now my son is unconscious in ICU. Kindly an appropriate legal action may kindly be taken against Veeru, Kamal alias Mitha, Arun, Prabh, residents of Tanki Mohalla, Garha, Jalandhar and Smiley and his 6-7 unidentified persons. After taking MR of my son from Civil Hospital, Jalandhar I will produce

before you. Statement has been recorded, heard and is correct. Sd/-(Punjab), Ashu.”

3. Contentions:

On behalf of the petitioner

At the outset, learned counsel for the petitioner submits that the matter has been compromised between the parties on the basis of compromise dated 17.03.2025 (Annexure P-3), with the intervention of the respectable of the society, the complainant does not want to pursue with the matter any further. He further submits that a petition bearing No. CRM-M-16504-2025 for quashing of FIR on the basis of said compromise, has already been preferred, in which notice of motion was issued and parties were directed to record their statements before the trial Court vide order dated 26.03.2025. On merits he contend that there is a delay of more than 24 hours in lodging the FIR.

On behalf of the State/complainant

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. According to which, the petitioner is behind bars for 7 month and 1 day.

Learned counsel appearing on behalf of the complainant admits the factum of compromise (Annexure P-3) and also endorsed no objection, in case the present petition is allowed and petitioner is enlarged on bail.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 7 months and 1 day and is not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean

antecedents and parties have already settled the matter. Moreover admittedly the injury attributed to the petitioner is on the head with a danda blow, is not dangerous to life added with the fact that investigation is complete, challan stands presented on 26.10.2024, charges have been framed on 13.01.2025 and out of total 15 prosecution witnesses, none has been examined so far. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein “*bail is a rule and jail is an exception*” and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of Constitution of India, as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 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.

(SANDEEP MOUDGIL)
JUDGE

01.04.2025

Meenu

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