



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16189-2025
DECIDED ON: 28.03.2025

RAHUL MORIYA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Naveen Bawa, 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 483 of BNSS, 2023 seeking regular bail to the petitioner in case/FIR No. 0008, dated 25.02.2021, u/s 307, 326, 325, 324, 148, 149 of IPC 1860 (Sections 341, 120-B, 201 of IPC 1860 added later) registered at PS Jodhan, District Ludhiana (Annexure P-1).

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

“Statement of Jagmohan Singh son of Harjinder Singh, resident of House No. 530, Jawaddi, District Ludhiana age approximately 40 years, mobile no. 7688005000 that I am the resident of the above said address. I run the business of sale and purchase of cars. On dated 23.02.2021, somebody called from his mobile no. 8556963592 on my mobile no. 9888266411 and who said that I want to sell my Polo Car, there is marriage of my sister and I am in dire need of money.

Thereafter, I alongwith my friend Sandeep Singh son of Jarnail Singh resident of Guru Nanak Nagar, Near Village Gill, District Ludhiana came to my home on my bullet motorcycle. The person who had called me for selling the car at village Mansuran near Primary School. I and my friend Sandeep Singh came to village Mansuran on bullet motorcycle in order to have a look of car and were standing near Primary School Mansuran. At time approximately 9:40 AM again phone call was received from mobile no. 8556963592, who asked me about my arrival that where have you come on that I replied that we are standing near Primary School Mansuran. Who said that I have gone to the dairy for delivering of milk. My son is coming to receive you. Two young men having hair cut came to us on activa, who asked to us that you have come for having the look of car, I replied that yes, we have come. The young man having hair cut started to drive activa ahead of us and I started to drive the motorcycle and my friend Sandeep was pillion rider. I started to follow on my bullet motorcycle to activa from village Mansuran to Dolon Kalan on metalled road and by going little ahead near the canal, there were four young men on two motorcycles who were having Dah and kirpan. One bullet motorcycle color black and one more motorcycle color black were lying over there with them. Two activa persons also stood with them and when we went near to them on our motorcycle then one young man from them surrounded our motorcycle who were having the muffled faces and gave a kirpan blow upon my right arm which landed on the Karra as same was wearing on my arm. I and my friend Sandeep both fell down from the motorcycle and thereafter, we both were about to run then the young man gave blows on the head with intention to kill to both of us and I forwarded my left arm for my safety then the Kirpan blow was hit on my left arm and during this second person gave Dah blow on the left hand of my friend Sandeep Singh who forwarded his left hand for his safety then the same hit on the ring finger of his left hand and also on the palm. The persons who were on activa were having the hockeys and gave hocky

blows to me and my friend Sandeep Singh while lying down, which hit on my left leg and left arm was broken and when we both raised the voice for our safety then the persons working in the adjoining fields came to rescue us then 6 youngmen fled away on their motorcycles alongwith their weapons towards village Mansuran. These all youngmen were having their muffled faces. The wayfarers got admitted both of us in injured condition in the Mediway Hospital, Ludhiana. Where I and my friend Sandeep Singh are under treatment. The youngmen who have caused the injuries to me and my friend Sandeep Singh, after their verification statement will be got recorded to you again. Legal action may be taken against the unknown persons. Statement has been got recorded to you, heard, it is correct.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the allegations against the present petitioner is that he was armed with kirpan and gave kirpan blow on the hands and arms of the complainant Sandeep Singh. He further contends that the injuries attributed to the petitioner are not dangerous to life and also not on the vital part of the body. It has been contended on behalf of the petitioner that co-accused namely Saka Mohammad and Happy Singh have already been granted the concession of regular bail by the trial Court vide orders dated 25.01.2023 (Annexure P-3) and 24.02.2022 (Annexure P-4).

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 is a habitual offender as he is involved in another case.

4. **Analysis**

Be that as it may, considering the custody period i.e. 05 months and 17 days for which the petitioner has suffered incarceration; the injuries attributed to the petitioner are not dangerous to life and also not on the vital part of the body, therefore, ingredients of Section 307 IPC *prima facie* is not made out against the petitioner; co-accused namely Saka Mohammad and Happy Singh have already been granted the concession of regular bail by the trial Court vide orders dated 25.01.2023 (Annexure P-3) and 24.02.2022 (Annexure P-4).

Also considering the fact that investigation is complete, challan stands presented to Court on 05.12.2024, charges are yet to be framed and total 06 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.

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.

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*