



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17093-2025
DECIDED ON: 07.04.2025

SAMESH SINGH ALIAS BILLA HERRI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sumit Dua, 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 BNSS, 2023 for grant of regular bail to the petitioner in FIR No.126, dated 26.09.2024, under Sections 109, 351(2), 191(3), 190 of BNS, 2023 and Sections 25 & 27 of Arms Act, 1959, registered at Police Station City Patti, Tarn Taran.

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

“Statement of Tejpal Singh son of Manjit Singh resident of Ward No. 5 Bhullar Colony Patti, Tarn taran aged about 25 years 987749696, I have stated that I am a reside of the said address and running a welding shop at Tarn Taran Road Patti. On dated 25/9/2024, it will be time will be around 10:15 PM that I and my brother Gurpreet

Singh was standing on Kandyala Road with my friend in front of Amardeep Palace. Then a Honda amaze car come from kandyala side in which Honey, Siva and 2 other boys whose names i don't know came along with them and Honey was driving the car. I said to him that why are beating Horn? Honey abused me and took the car away and after about 15 minutes which would be around 10:30 PM that he was standing there talking with his friend, then again a xylo car came, in which Goli a Raja son not known resident of Kasmir Colony armed with Pistol, Billa @ Hiddi son of not known Basti Dhara Singh armed with Pistol, Goli @ Raja son of not known resident of Chathua Wala armed with Pistol, Honey son of know not resident of Kasmir Colony empty hand, Shiva son of not known resident of Kasmir Colony with empty handed and 2-3 unidentified persons came and as soon as they came Billa @ Hiddi fired the pistol directly at me with the intention of killing me, the pistol fire hit my left thigh and I fell down and Shiv beat me with Kada. Then my brother came forward to rescue me, then Gauri Son of unknown resident of Chathua Mohalla, fired the pistol with the intention of killing my brother. Goli@ Raja Son of not known resident of Kasmir Colony Patti, shot my brother from pistol, the fire hit my brother's left foot and Honey hit me on my left side chest with a stick. They attacked on me and I was seriously injured. We raised alarm that we have been killed. Then our friends rescued us from them with great difficulty. They got into their vehicle and ran away, then our friends and my brother Kulwinder Singh picked us up from there and arranged a ride and brought us to Guru Nanak Dev Hospital where I and my brother Gurpreet Singh were treated. The grievance is that Honey came to us and honked the horn of the vehicle, I stopped him, so they opened fire with the intention of killing us. Legal action should be taken against this case and justice should be given to us. You are very kind. I have written a statement to you. It is good to hear. SD/Tejpal Singh, corifimed statement-Gurpreet Singh, verified contact- Gurmeet Singh AS, Police Station City Patti, dated 26-09-2024 Action Police-Today, dated 26-9-2024. ASI was present at the police station, then Chief Munshi The police station noted that a telephone call was made to Guru Nanak Dev Hospital Tarn Taran

got information that Tejpal Singh and Gurpreet Singh sons of Manjit Singh.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the matter has been compromised between the parties vide compromise deed dated 22.11.2024 (Annexure P-2), with the intervention of the respectable of the society and the complainant as well as the injured, who do not want to pursue with the instant FIR any further. It has been further contended that co-accused namely Gauravdeep Singh and Rajan Singh @ Honey have already been granted the concession of anticipatory bail by this Court vide orders dated 30.01.2025 (Annexure P-4) and 10.01.2025 (Annexure P-5) passed in CRM-M-5182-2025 and CRM-M-64363-2024 respectively. He further asserts that the injury attributed to the petitioner is on left thigh of the injured, which is on non-vital part of the body and not dangerous to life.

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 does not controvert the aforesaid fact and seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in four other cases.

On behalf of the complainant

Mr. Prashant Bansal, Advocate has put in appearance on behalf of the complainants and filed his *Vakalatnama*, which is taken on record. He admits the factum of compromise entered into between the parties.

4. **Analysis**

Be that as it may, considering the custody period i.e. 02 months and 12 days for which the petitioner has suffered incarceration; co-accused namely Gauravdeep Singh and Rajan Singh @ Honey have already been granted the concession of anticipatory bail by this Court vide orders dated 30.01.2025 (Annexure P-4) and 10.01.2025 (Annexure P-5) passed in CRM-M-5182-2025 and CRM-M-64363-2024 respectively and the fact that the matter has been compromised between the parties vide compromise deed dated 22.11.2024 (Annexure P-2).

Also considering the fact that investigation is not yet completed, 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.

07.04.2025*Poonam Negi***(SANDEEP MOUDGIL)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*