

2025:PHHC:046406



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

**CRM-M-17499-2025 (O&M)
DECIDED ON: 04.04.2025**

ROSHAN MASIH ALIAS BATA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Annie, Advocate for
Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-13209-2025

Application is allowed, as prayed for.

Exemption from filing certified copy of Annexures P-1 to P-7 is
granted.

CRM-M-17499-2025

This petition has been filed under Section 483 of BNSS, 2023 for
grant of regular bail in FIR No.21 dated 28.01.2023 u/s 341/379-B/395/363 of
IPC (lateron offence u/s 379-B of IPC was reduced and Sections 395/363 of
IPC were added) registered at P.S. Makhu, District Ferozepur.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Naseem son of Sharif Ahmed, resident of Gangoh, P.S. Gangoh, Tehsil Nakur, District Saharanpur, Uttar Pradesh, Mobile No.98979-72415, aged about 37 years. Stated that I am resident of above said address. I am married. I have two children and I have studied 5th class. I have been working as driver with the owner of truck/container No.UP-15-BT-9027 namely Arif son Akbar, resident of Gangoh, P.S. Gangoh, Tehsil Nukkar, District Saharanpur, Uttar Pradesh for the last 01 year. On 27.01.2023 at 4:00 PM, by loading buffaloes in the said truck/container from Village Suniar, District Gurdaspur, I was going to Derabassi, Punjab, at that time, Adil son Rashid, resident of Gangoh and Jatin son Jacob, resident of Suniar, Gurdaspur as helper was with me. When at about 07:00 PM, we reached T- point at Village Maujgarh, P.S. Makhu, then a white colour Ford car bearing No.PB05-AD-2959 came from behind from the Harike side and stopped ahead of our truck, out of which, 6 persons got out, out of them, 4 were clean shaven and 2 were Nihang Singh Sardars, who started causing beatings to three of us and started snatching the truck/container loaded with buffalos. In the meanwhile, on finding opportunity, Jatin fled away from the spot. Then two Nihang Sikhs and one clean shaven, three of them made me and Adil sit in the car and other three young men took the said truck/container including buffalos and the said car towards Tarn Taran. When the car stooped near Toll Plaza at Village Usma (Tarn Taran) then I and Adil on finding opportunity, fled away from the car. Thereafter, we did not know where aforesaid persons had taken away the said car and truck. We informed about the entire incident to buffalos' owner Washid son of Hazishad, r/o Suniar, District Gurdaspur. Since then I and Washid were searching about the truck/container and buffalos but till now, we have not got any clue. I will produce the receipt about said buffalos. Today, I alongwith Washid was going

to police station for reporting the said incident, but you met me near Railway Phatak, Makhu. I got my statement recorded before you, heard it and the same is correct. Kindly initiate legal proceeding against said persons'

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner has argued that initially the FIR was registered against unknown person and subsequently on the basis of statement made by Vashid s/o Hazishad, the petitioner and co-accused were nominated vide Rapat No.28 dated 24.09.2023. He further submits that the investigation in the matter is complete, challan stands presented and nothing is to be recovered from the petitioner.

On behalf of the State

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 1 year 6 months and 7 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in another case as well.

4. Analysis

Considering the sufficient period undergone by the petitioner i.e., 1 year, 6 months and 7 days added with the fact that investigation is complete, challan stands presented on 23.11.2023, charges have been framed on 31.08.2024 and out of total 12 prosecution witnesses, 2 have been given up and only 2 have 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.

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial the concession of bail.

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

04.04.2025

Meenu

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