

2025:PHHC:046245



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17536-2025
DECIDED ON: 04.04.2025

SANDEEP ALIAS SANDIP KUMAR ALIAS SHAMPY
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jasraj Singh, Advocate for the petitioner.
Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail in FIR No.128 dated 09.08.2020 under Sections 302, 148, 149 of IPC to which Sections 201 and 120-B of IPC added later on, registered at Police Station Bullowal, District Hoshiarpur.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Sukhdev Singh son of Malook Singh, r/o Chakowal Sekhan, PS Ballowal, District Hoshiarpur, aged about 50 years, M.9463287097, stated that I am residing at the aforesaid address and used to do the contractorship of sanitary. I have two sons and the elder one is Karandeep Singh @ Karan, aged about 22 years, who after completing his education, had applied for the post of Guard in Sonalika Factory and my younger son Kamaldeep Singh, who is studying in 10+2 class. My son Karandeep Singh @ Karan in the morning alongwith his friend

Sandeep Singh @ Seepa son of Rawal Singh, r/o Dhugga had gone to attend marriage and were returning back to our village Chakowal Sekhan on his motorcycle make Pulsar bearing No.PB-07-2065 alongwith his friend Seepa. When they reached in front of the house of the Sarpanch of the village on the road then at about 7:15 PM, then from the side of the ground of the village from back side, Balwinder Kumar @ Gopi s/o Onkar Singh, R/o Chakowal Sekhan armed with kirch alongwith Sapy s/o Onkar armed with sword, Kewal Singh son of Harmesh Lal armed with sword, Amarjit Singh @ Kaka son of Harmesh Lal armed with sword, residents of Chakowal Sekhan, Madeep Singh, r/o Sherpur Glind armed with khanda alongwith two other boys being their friends belonging to village Sherpur Glind, who are also having kirches with them and alongwith them Bawa r/o Dhade Fateh Singh, who was also having kirch and alongwith them, there was one more person namely Ashu, who also belongs to Bullowal area was also having khanda and alongwith them five more unidentified persons, who were also having swords and khandas, came on the motorcycles. That all the aforesaid persons encircled my son Karandeep Singh and on hearing the alarm, myself alongwith my brother Dharminder Singh went outside on the road then all the aforesaid persons were inflicting injuries on my son with their respective weapons then my brother raised alarm of mardita- mardita and in the meantime, other peoples also started gathering there my son ranaway from the spot on their respective motorcycles alongwith weapons by giving threats. After arranging the transport, we have brought our son Karandeep Singh badly injured in the emergency ward at Civil Hospital, Hoshiarpur where Doctor has declared my son as dead. That in order to kill my son Karandeep Singh, the entire planning has been made by Seepa son of Rawal, R/o Dhuga, and Balwinder Kumar @ Gopi, r/o Chakowal Sikhan and have inflicted injuries by all the aforesaid persons and have killed. The cause of fight is that due to lockdown, they have raised

arguments with my son without any reason. Due to which aforesaid persons were having grudge with my son and due to this grudge all the aforesaid persons by inflicting injuries on my son have killed him. Legal action be taken against them. I have got recorded the aforesaid statement in the Civil Hospital, Hoshiarpur in the presence of my brother Dharaminder Singh. Heard, which is correct. Action be taken. Sd/- Sukhdev Singh, Sd/- Dharminder Singh, Attested Ajmer Singh SI SHO PS Bullowal, dated 09.08.2020.'

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and no injury whatsoever has been attributed to the present petitioner. He further submits that investigation is complete, challan stands presented and nothing is to be recovered from the petitioner, who is in custody since 08.10.2024. The attention of this Court has been drawn to the orders dated 14.03.2022 & 13.03.2023 (Annexures P-2 & P-3 respectively) vide which similarly situated co-accused persons have been granted the concession of regular bail.

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 5 months and 26 days.

Learned State Counsel on instructions from the Investigating Officer does not controvert the above-said fact and rather candidly submits that no specific injury has been attributed to the petitioner.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 5 months and 26 days 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 similarly situated co-accused has already been granted the concession of regular bail vide orders dated 14.03.2022 & 13.03.2023 (Annexures P-2 & P-3 respectively). Moreover admittedly no specific injury has been attributed to the petitioner added with the fact that investigation is complete, challan stands presented on 25.11.2024, charges have been framed on 05.02.2025 and out of total 28 prosecution witnesses, none one 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

04.04.2025

Meenu

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