



233

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17952-2025
DATE OF DECISION: 07.04.2025

GAURAV JALOTA

...PETITIONER

Versus

STATE OF U.T CHANDIGARH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Himanshu Chhabra, Advocate for the petitioner(s).

Mr. Prateek Rathor, Addl. PP, UT Chandigarh.

Mr. Simranjit Singh, Advocate with

Ms. Chahat Agarwal, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 for grant of Regular bail to the petitioner in case FIR No.25, dated 17.03.2025 (Annexure P-1) under Sections 316(5), 318(4), 338, 336(3), 340(2), 61(2) of Bharatiya Nyaya Sanhita, 2023 and 24 of Immigration Act registered at Police Station: P.S. North, Chandigarh.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘Complaint letter regarding fraud against New Maple Immigration Travels PVT. LTD., Sector 9-D Chandigarh. Sir, it is a humble request that I am Gurpreet Singh, son of Shri Shamsher Singh, resident of village Sanor, district Patiala, Punjab. I alongwith my son Harshdeep Singh applied for the visitor visa with New Maple Immigration Travels PVT. LTD.



Sector 9-D Chandigarh in which the above mentioned visa provider had submitted wrong documents due to which my son Harshdeep Singh got Visa refusal. At the time, the above mentioned visa provider had taken Rs 2,50,000/- in cash from me. Sir, at the time of applying for Visa file, the above mentioned visa provider had told us verbally that if your refusal comes, your money will be returned but now after getting the refusal, the above visa provider is not returning the amount given by us which is Rs. 2,50,000/-. Please kindly help us in returning our above given amount of Rs 2,50,000/-. It will be so kind of you. With thanks. Applicant s/d Gurpreet Singh son of Shri Shamsher Singh resident of village Sanor, district Patiala, Punjab mobile no. 9815173431 Dated 09.12.2024. Police Action:- According to Complaint No. ICMS/2024/036398 Dated 09.12.2024 made by Sh. Gurpreet Singh S/o Sh. Shamsher Singh R/o H.No.182, Village-Sanaur, District-Patiala Punjab age-43 years and Compliant no. ICMS/2024/036399 Dt.09.12.2024 made by Davinder Singh Village- Sanaur, Distt. Patiala. The case was registered on which Senior Officer has ordered to register a case, on which case no. 25 Dt.17.03.2025 U/S 3) 6 (5), 318 (4), 338, 336 (3), 340 (2). 61 (2), BNS 24 immigration Act. PS-03 UT CHD Bar registered against Gaurav Jalota owner of New Maple Immigration and others by registering a copy of the original FIR in the Registrar Police Station and handing over the investigation to Ct. Mohit 530/CP Ct. Sandeep 4771/CP Regarding investigation, I am from police station and UT area. HC Note:-The Parties have a right to legal aid, and they or any of them, if required, can avail free legal aid from District legal Services Authority, 2nd floor Service block, District Court Complex, Sector-43 UT Chandigarh.'



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. He submits that the matter has been compromised between the parties and in this regard he has brought a demand draft No. 506742, in the name of Gurpreet Singh amounting to Rs. 2,10,000/- and has handed over to counsel for the complainant. He further submits that compromise deed dated 24.03.2025 (Annexure P-3) is already attached with the petition. He contends that the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, therefore, prays for grant of regular bail to the petitioner.

On behalf of counsel for UT Chandigarh and counsel for complainant

On the other hand, learned Counsel for UT appearing on advance notice, accepts notice on behalf of respondent and has filed the custody certificate of the petitioner, which is taken on record.

He on instructions from the Investigating Office is not in a position to controvert the submissions made by learned counsel for the petitioner.

Learned counsel for the complainant has also accepted the factum of compromise between the parties and has no objection if the petition is allowed.



4. Analysis

From the above discussion, it is clear that the matter has been compromised between the parties and in this regard demand draft No. 506742, in the name of Gurpreet Singh amounting to Rs. 2,10,000/- has been handed over to counsel for the complainant, therefore, chances of acquittal cannot be ruled out, counsel for the complainant also has no objection if the petitioner is granted regular bail, moreso, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt.

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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

07.04.2025
anuradha

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