

CRA-S-1770-2024 (O&M)  
CRA-S-1209-2024 (O&M)  
CRA-S-1487-2024 and  
CRA-S-2970-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(201)

Date of Decision : 29.01.2025

1. CRA-S-1770-2024 (O&M)

Harpal Singh @ Lillu

...Appellant

Versus

State of Haryana and another

...Respondents

2. CRA-S-1209-2024 (O&M)

Parvinder Malik @ Dabbu

...Appellant

Versus

State of Haryana and another

...Respondents

3. CRA-S-1487-2024

Nitesh Kumar @ Nitu

...Appellant

Versus

State of Haryana and another

...Respondents

4. CRA-S-2970-2024

Daman Arora

...Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sandeep Saini, Advocate  
for the appellant in CRA-S-1209-2024.

Mr. J.S. Brar, Advocate  
for the appellant in CRA-S-1770-2024.



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Mr. Aman Pal, Advocate  
Mr. Rajender Kumar, Advocate and  
Ms. Sweta Beniwal, Advocate  
for the appellant in CRA-S-1487-2024.

Mr. Dinesh Sharma, Advocate for  
Ms. Veena Hooda, Advocate  
for the appellant in CRA-S-2970-2024.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Namit Khurana, Advocate and  
Mr. Parth Aneja, Advocate  
for respondent No.2/complainant in all the cases.

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**KULDEEP TIWARI, J.**

**CRM-19397-2024 in CRA-S-1770-2024**

For the good and valid reasons assigned in the application, the delay of 406 days in filing the appeal, is condoned.

Application stands **disposed of** accordingly.

**CRM-13373-2024 in CRA-S-1209-2024**

For the good and valid reasons assigned in the application, the delay of 245 days in filing the appeal, is condoned.

Application stands **disposed of** accordingly.

**Main Case(s)**

1. All the four above mentioned instant appeals are amenable to be decided together, as the common relief of regular bail has been sought therein, in case FIR No.164, dated 16.04.2022, under Sections 148, 149, 302, 307, 323, 506, 379-B, 120-B and 201 of the IPC, 1860, and under Sections 25 and 29 of the Arms Act, 1959, and Section 3 of Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station



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appeals are taken up together for adjudication.

### ***FACTS OF THE CASE***

2. The instant FIR, has been registered on a statement suffered by one namely, Mohit Sharma, who is alleged to be an injured eye witness. The relevant extract of the statement, which become the bedrock for registration of the FIR (supra), is extracted hereinafter :-

*“Statement as follows that I am resident of the mentioned address and work as a sales man. On 15.04.2022 I had come to Yamuna Nagar from Ludhiana Punjab for my sister's wedding. On 15.4.2022 I along with Janu, Bobby @ Akash, Shanu and Bittu and Rajat by boarding in Car No HR02AF 5000 Mark a Safari of Janu. we left for Vintage Grill Palace Jagadhri at around 9:30 pm to attend the marriage from the house of Janu S/o Rajindra Balmiki and when after attending the marriage function at around 12:45 AM we started going back at night and as soon as we came out of the gate of Vintage Grill at the same time as soon as we started sitting in the car at once 15-20 boys came with revolvers and country made guns in their hands and shouted as soon as they came, they proclaimed that Janu has to be killed today and everybody started firing from their arms holding in their hands, out of which I recognized some boys who are Manoj alias Shanti resident of Bhatia Nagar, Sachin Pandit resident of Sudhail and Sumit resident of Unheri and I can identify others when they come before me and one of them shot at my left leg and the other boy's name and address unknown to me fired a shot that hit my left leg and others also shot me on my left leg and other boys challenged and said that Janu Chude Chamar, tu kahan jayega, tu hamare se pahle bhi bach gaya tha, ab aaj tujhe jaan se marenge and they*



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*surrounded and shot Janu and shot him in the stomach and other parts of body. I had fallen down and they thought that I am dead, they attacked my other companions Rajat Kaushal S/o Amit resident of near City Centre Road, Yamuna Nagar. They were also taking one name of Anmol and he was also shot and at the same time Janu fell down on the spot and became unconscious. As soon as people present in the wedding ceremony started making noise, Sachin Pandit etc. ran away from the spot along with their weapons and continued firing even while running and they were threatening that those who have been left, would be killed later. Jaanu was admitted to Gaba Hospital by the persons who had come to marriage function but he died due to the bullets shot fired.. As such legal action be taken against Sachin Pandit and his other 15-16 associates and that I have recorded my statement during treatment in the Gaba hospital which I have listened, read over and found same to be correct. Sd/- Mohit Sharma.”*

3. During the investigation, the scene of crime was got examined, by the team of FSL, and material evidence were collected from the spot, apart from taking photographs. The proceedings under Section 174 of Cr.P.C., with regard to the death of one namely, Jannu was got conducted. Furthermore, 17.04.2022, on the basis of the secret information, accused Harpal Singh @ Lillu and Nitesh Kumar @ Nitu (one of the present appellants) were arrested, and during the investigation, in pursuance of disclosure statement and the confession, the accused Harpal Singh @ Lillu, disclosed the involvement of other accused persons, i.e. Sachin Pandit, Sumit Rana, Ajay Panchal, Deepak, Daman, Piyush, Vicky Sodhi, Shanti, in the said occurrence. Harpal Singh @ Lillu got demarcated the place of occurrence and also



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got recovered the vehicle, make Scorpio, bearing Registration No.HR-05AZ-4530, iron pipe/rod, used in the commission of instant offence. Further, the accused Nitesh Kumar @ Nitu got recovered his clothes, as worn by him at the time of occurrence, mobile and wooden danda/binda, used in the commission of offence, were also got recovered.

4. In a similar way, co-petitioner Daman Arora also got recovered Swift Car, bearing Registration No.HR-51AW-1597, used in the commission of the instant offence. He has also disclosed about other accused persons, who were involved in the commission of instant crime. The co-petitioner Parvinder Malik @ Dabbu, was arrested on dated 01.10.2022. He has also suffered disclosure statement and in pursuance of his disclosure statement, he got demarcated the place of occurrence.

***SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT(S)***

5. Learned counsel for the appellant(s) made joint submissions, in order to substantiate their arguments. The attention of this Court was drawn towards the contents of the FIR (supra), to submit that, neither the appellant(s) were named in the instant FIR, nor any specific role has been attributed to them. Furthermore, the gun-shot injury, which was caused to the deceased-Jannu, was in fact, attributed to the accused persons-Sachin Pandit and Sumit Rana. It is further submitted that though there are specific allegations, which surfaced during the investigation, to the effect that they also caused injuries to the deceased with weapons like, danda/binda or iron rods. However, this aspect is yet to be proved by the prosecution, by leading cogent evidence before the learned trial Court concerned. It is also submitted that the material witness namely, Mohit Sharma, who is an injured eye witness, has turned



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hostile. Even, the other injured eye witness namely, Anmol, has also turned hostile, and did not support the case of the prosecution. Though, there is one more eye witness namely, Vinod, who was examined as PW-8, though, has supported the case of the prosecution, but no specific injuries have been attributed to the present appellant(s). One of the star prosecution witness namely, Rajat Kaushal, has yet not been examined by the prosecution, despite numerous opportunities were granted to the prosecution. The said witness still remains unexamined. In fact, he has left the country. Finally, they submit that the appellant(s) have already undergone the incarceration of more than two and half years, and the trial has not reached even the half mark, as on today, therefore, the conclusion of the trial would take a long time. This submission made by the learned counsel for the appellant(s) vociferously opposed by the learned counsel for the complainant.

***SUBMISSIONS OF LEARNED STATE COUNSEL AS WELL AS LEARNED COUNSEL FOR THE COMPLAINANT***

6. On the other hand, learned State counsel, while making submissions, has drawn the attention of this Court, towards the specific roles attributed to the present appellant(s), which are mentioned in the replies, filed in the instant appeals, wherein, all the appellant(s) are allegedly stated to have caused injuries with their respective weapons, i.e. danda/binda and iron rods to the deceased-Jannu, to submit that all the appellant(s), have equally participated in causing the injuries to the deceased, and therefore, they are not entitled for the relief of regular bail.

7. Learned State counsel on instructions imparted to him from the quarter concerned, informs this Court, that out of total 54 witnesses, as cited



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by the prosecution in the final report, 22 prosecution witnesses have been examined, and 32 witnesses are yet to be examined. He has also placed on record the custody certificates dated 28.01.2025, qua all the appellant(s), in all the instant appeals, today in the Court, which are taken on record.

8. Mr. Namit Khurana, Advocate, who has caused appearance on behalf of the complainant, in all the four appeals, has also opposed the grant of relief of regular bail to the present appellant(s), and submits that the cause of death of the deceased-Jannu, as opined by the Doctor concerned, who has conducted the post-mortem report, is *'due to shock and haemorrhage consequent to described firearm injuries and multiple fractures and their complications, which are sufficient to cause death'* therefore, the role attributed to the present appellant(s) are equally grievous, with that of the persons, who has caused the gun-shot injuries. He further submits that the accused Harpal Singh @ Lillu, is a habitual offender, as he is involved in six other cases.

### **ANALYSIS**

9. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties concerned, and penning down any opinion upon the instant appeals, it is deemed imperative to capture an overview of some significant legal propositions.

10. *"Bail is the Rule and Jail is an Exception"*. This basic principle of criminal jurisprudence was laid down by the Hon'ble Supreme Court, way back in 1978, in its landmark judgment titled ***"State of Rajasthan V. Balchand alias Baliy"***, 1977 AIR 2447, 1978 SCR (1) 535. This principle finds its roots in one of the most distinguished fundamental rights, as



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enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

11. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

12. In **“Gurbaksh Singh Sibbia v. State of Punjab”, (1980) 2 SCC 565 at 586-588**, the purpose of granting bail is set out by the Hon’ble Supreme Court with great felicity as follows:-

*“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476 (479, 480) that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy' cases observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504 (SB) it was observed, while dealing with Section 498 which corresponds to the*



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*present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.*

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*29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of*



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*each case will govern the exercise of judicial discretion in granting or cancelling bail".*

30. *In American Jurisprudence (2d, Vol. 8, page 806, para 39) it is stated :*

*"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."*

*It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."*

13. Also, in ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh", 1978 AIR (Supreme Court) 429***, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

*"9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the*



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*opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.*

*10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice - to the individual involved and society affected.*

*11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail*



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*unreasonable and a policy favouring release justly sensible.*

*12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.*

*13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his*



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*own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal.”*

14. The Hon'ble Supreme Court in **“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023**, has also discussed the effect of Section 37 of the NDPS Act, in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

*“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”*



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15. Further, the Hon'ble Supreme Court in ***“Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another”, 2024 (3) RCR (Criminal), 494***, it has been specifically held that the right to speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21. The relevant extract of the same reads as under:-

*“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.*

*19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.*

*20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”*



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16. Be that as it may, on the touchstone of the law, as discussed above, this Court has examined the facts of the instant FIR, and is of the considered opinion that all the present appellant(s), deserves to be extended the relief of regular bail, for the reasons extracted hereinafter :-

- (i) all the appellant(s) were not named in the instant FIR, nor any specific role has been assigned to them, though there alleged to be co-assailants, who has caused the injuries to the deceased;
- (ii) all the appellant(s) have undergone the incarceration of about more than two and half years, as on today;
- (iii) the trial has not reached even the half mark, as on today, and therefore, the conclusion of the trial would take a long time;
- (iv) some of the star witnesses have turned hostile;
- (v) whether the evidence brought on record by the prosecution, as on today, is sufficient to bring home the guilt of the present appellant(s), would be the moot question of law, to be adjudicated by the learned trial Court concerned, at appropriate stage;

### ***DECISION***

17. However, considering the above facts, long period of incarceration undergone by the present appellant(s), stage of the trial, and the role which can be distinguished from the role of the accused Sachin Pandit and Sumit Rana, this Court deems it fit and appropriate to enlarge all the present appellant(s) on regular bail.

18. Consequently, all the four instant appeals are **allowed**. The appellants-Harpal Singh @ Lillu, Parvinder Malik @ Dabbu, Nitesh Kumar

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bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

19.           However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the instant appeals only.
20.           Pending applications, if any, stand **disposed of** accordingly.
21.           Photocopy of this order be placed on all the connected case files, as numbered above.

(KULDEEP TIWARI)  
JUDGE

January 29<sup>th</sup>, 2025  
Manpreet

Whether speaking/reasoned       :     Yes/No

Whether reportable                 :     Yes/No