

2025:PHHC:050322



215

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

**CRM-M-18792-2025
DECIDED ON: 21.04.2025**

SAHIL GHAI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 BNSS, 2023, seeking regular bail to the petitioner in case FIR No.107 dated 17.06.2023, under Sections 406, 420, 467, 468, 471, 474 of IPC, 1860 (Section 120-B of IPC added later on) registered at Police Station Phase-1, District SAS Nagar.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy Rukka, Station House Officer, Phasel, Jai Hind, Today, ASI alongwith Sub Inspector Gurdeep Singh No.1367, C-2, Jagjit Singh no. 2148 with government vehicle bearing number PB-65AH-3661, Driver Simranjit Singh No.2337 near Cheema Chowk, Airport Road in connection with patrolling and search of Suspicious Persons, where the secret informer had informed

that Nitin Kumar @ Ghai son of Pawan Kumar, resident of House No.3136, Street No.2, Clony Mahavir Jain, Sunder Nagar, Ludhiana (Age 32/33 Years) and Sahil Ghai son of Suresh Ghai, resident of House No.42, Near Lal kothi, Haibowal Kalan, Ludhiana (Age 30/31 years) have opened a fake office in the name and style of "Overseas Immigration" in Plot No. D/133C, Manchanda Tower, Fourth Floor, Phase -7, Industrial Area, Mohali and through social media and advertisement are deceiving the general public for sending them abroad and under the pretext of sending abroad, they are preparing forged and fabricated visa stamps by taking huge amount of money. If we raid at their premises right now, we can take all these people in custody, who are running their office without getting license Deputy Commissioner, SAS Nagar and we can get public passports as well as fake stamps and visas. Nitin Kumar @ Ghai and Sahil Ghai are already indulged in so many cases so above said persons also booked under sections 406, 420, 467, 468, 471 and 474 of IPC. To register a case in police station, Constable Simranjit Singh is sent to Police Station so Case is registered along with sections and file number to be mention. Control room Mohali and special officers be informed via telephonic conversation. ASI and fellow officers are sent to Industrial area Phase 7, Near Cheema Chowk, Airport Road, time 8: 00 PM Gurpartap Singh SI, CIA Staff dated: 17.06.2023. Case is registered after completion of Investigation and FIR copy is sent to Illaqa Magistrate and special officers via post.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the petitioner has not committed any offence and has been falsely implicated in the present case. He further contends that the FIR in question has been registered on the basis of allegations pertaining to the business of immigration, specifically the operation of a travel agency, which is governed by the provisions of the Punjab Travel Professionals Regulation Act, 2014.

The petitioner further submits that there has been a clear violation of the principles of fair and impartial investigation, as the complainant and the Investigation Officer are the same person, which raises doubts about the credibility of the prosecution's case. It is also argued that no private individual

had approached the investigating agency to lodge a complaint alleging fraud, cheating, or forgery against the petitioner, yet the investigating agency proceeded to file the FIR without verifying the allegations from any concerned party.

Additionally, the petitioner was arrested on 18.06.2023, and during police remand, no incriminating material was recovered. The petitioner is presently in judicial custody. It is further submitted that the challan has already been filed in this case, and as the trial is expected to take a considerable amount of time to conclude, there is no justifiable reason to continue the petitioner's detention as it would not serve any useful purpose.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He submits that that earlier a bail petition bearing No.CRM-M-196-2024 was dismissed by this Court vide order dated 23.01.2025 (Annexure P-9). Additionally he submits that the petitioner is a habitual offender, as he is involved in other cases, therefore, prays for dismissal of the present petition.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 1 year 9 months and 24 days, wherein investigation is complete, challan stands presented on 15.09.2023, charges have been framed on 20.03.2024 and out of total 28 prosecution witnesses, only 3 have been examined so far. This Court is sanguine of the fact that conclusion of trial shall take sufficient time, therefore, 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 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

21.04.2025

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>