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2025:PHHC:050339



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

**CRM-M-18869-2025
DECIDED ON: 21.04.2025**

RAJESH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sahil Choudhary, Advocate with
Mr. Manjeet Garhwal, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana

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. 0443 dated 11.12.2023 registered under Sections 148, 149, 302, 379, 404, 120-B read with Section 34 of IPC and Sections 25 of Arms Act, at Police Station Barauda, District Sonipat (Haryana).

2. Facts

Facts as narrated in the FIR reads as under:-

“To SHO Sahib, Thana Baroda Gohana, Sir, I humbly request that I, Manjeet, son of Rajesh, caste Jat, a resident of village Chichhangana, am currently studying. We are two brothers and a sister. At present, my father was serving as the Sarpanch of the village. When my father contested the election for the post of Sarpanch, Dalbir, son of Basti, caste Bairagi, from our village

was also a candidate. However, he was murdered, and my father won the election. Since then, the Bairagi family has held a grudge against my father. Today, on 11-12-2023, my father, Rajesh, was going to the field on a motorcycle, as he did every day. At around 6:30 AM, Ramesh Kumar from our village called me and informed me that someone had shot my father and asked me to come to the field immediately. Upon receiving this information, my mother and I rushed to the spot in our car. I took my father in the car for treatment and brought him to PGI Kanpur, but the doctor declared him dead. Rajesh, son of Bastiram, caste Bairagi, from village Chichhangana, along with his two sons and Dalbir's three sons, fired multiple bullets at my father, Rajesh, leading to his death. Legal action should be taken against all of them. My father also had a licensed revolver, which he always carried with him, and even today, the revolver was with him. However, our revolver is missing. I strongly suspect that the aforementioned individuals took it with them. I am submitting this application to you. Legal action should be taken based on my complaint. SD Manjeet Applicant: Manjeet S/O Rajesh Village Chichhangana Tehsil Gohana, District Sonipat ”

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 he was at home at the time of commissioning of offence. He submits that it is the son of the petitioner, who has given fatal gun shots to the Rajesh (since deceased). He has further argued that the antecedents of the petitioner are clean, meaning thereby, he is not a habitual offender. The attention of this Court has been drawn to an order dated 16.12.2024 (Annexure P-5) passed in CRM-M-34585-2024 vide which co-accused Kamlesh, who at least committed ‘recce’ and facilitated the commissioning of crime, has

already been granted the concession of bail and therefore, the case of the petitioner is at better footing.

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 4 months and 4 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the allegations against the petitioner are serious in nature, therefore the petitioner does not deserve the concession of bail.

4. **Analysis**

Considering the custody period undergone by the petitioner i.e., 1 year, 4 months and 4 day 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 Kamlesh has already been granted the concession of bail vide order dated 16.12.2024 (Annexure P-5) passed in CRM-M-34585-2024 and the case of the petitioner is at better footing from the co-accused Kamlesh, as the petitioner was at home at the time of alleged occurrence added with the fact that investigation is complete, charges have been framed on 24.01.2025 and out of total 25 prosecution witnesses, only 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

21.04.2025

Meenu

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