

2025:PHHC:056594



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

CRM-M-21944-2025

DECIDED ON: 01.05.2025

RAJ BALA ALIAS RAJBALA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ajay Chaudhary, Advocate  
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana

**SANDEEP MOUDGIL, J (ORAL)****1. Prayer**

This is First Petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [Erstwhile under Section 439 of the Cr.PC.] for grant of regular bail to the petitioner in pending trial under FIR No.190 under Sections 302, 323, 325, 427, 506, 148 & 149 of the IPC at Police Station Sadar Tohana, District Fatehabad [Annexure P-1].

**2. Facts**

Facts as narrated in the FIR reads as under:-

*“That the statement of Vikas S/o Omparkash S/o Sohan Lal, R/o House No.56, Street No.1, MITC Colony, Barnala Road Sirsa, age 30 years, Mobile No.90344-44729. It is stated that I am resident of the above address and run a pesticide shop in Chopta Nathusari, District Sirsa. We are three sister-brother. My eldest sister is Rupali, younger*

than her I and the youngest is Priyanka. My father Omparkash is retired from Haryana Police. My maternal home is in Village Pirthala, Tehsil Tohana, District Fatehabad. In village Pirthala, we Balwant S/o Hanuman, R/o Rishi Nagar, Hisar and Sunil S/o Prithvi Singh R/o Sirsa, Roshni Devi W/o Omparkash who is my mother, all have about 7 acres of agricultural land in their names. That which Kamalraj alias Dr. Tony, Omparkash and Rajender sons of Het Ram, R/o Pirthala along with other members of their family have possessed for several years. All the papers of the land are in our name. This land is being cultivated by Kamalraj and his brother and family members. We have had several Panchayats regarding this, but these people have not vacated our land. Today it will be around 2 o'clock in the afternoon that we to cultivate this land, my father Om Parkash S/o Sohan Lal, my mother Roshni Devi W/o Om Parkash, my uncle's (Tau) son Sunil S/o Prithvi Singh, all residents of MITC Colony, Sirsa and Balwant S/o Hanuman, R/o Rishi Nagar, Hisar who is my maternal uncle's son and apart from us there were 20 more men who were acquaintances of my father, whom my father had brought to do the digging for sowing jiri in the land. All of them were in my car No.HR 24AA8150 Dzire, Ropid car HR26CR-5855, my father Om Parkash also in car No. HR25G2729 Brand Etios, Sunil's car No.HR 25G-0029 and a Pick-Up vehicle HRS2A7552 in which we had brought food items for the labourers and for us, and a tractor Brand Swaraj 735 Blue colour which I do not know whose it is. My father had brought them all. They were ploughing our land with a tractor in the village Pirthala. We were present there at the spot when Kamal Raj alias Tony, Omparkash and Rajender sons of Hetram, Ashok Kumar, Dani and Saroj Kumar sons of Hetram, Rahul S/o Saroj Kumar, Maina W/o Hetram, Rajbala W/o Rajender, Banarasi W/o Kamalraj alias Tony, Shakuntala W/o Saroj Kumar, Sumitra W/o Omparkash, Sarla W/o Ashok Kumar, Priyanka D/o Saroj Kumar, Neha D/o Kamal Raj alias Tony, Poonam D/o Dani, Pandu alias Radheshyam S/o Shiv Raj, R/o Pirthala and 20/25 other persons of the Village along with them, all of them came towards us with sticks,

*rods, iron rods in their hands and Kamalraj alias Tony had an iron basola in his hand. As soon as they came, they attacked us with the intention of killing us. Kamal Raj alias Tony hit my father on the head with a Kasola that fell unconscious on the ground. Then all, my father, me, my mother Roshni Devi, Sunil and Balwant were hit with sticks and iron rods. They surrounded us from all sides and hit us on the head and body with the intention of killing us. When we shouted for help, more people from the village gathered. Seeing them, the labourers and common people who had come to work with us ran away from the spot out of fear. Then a large crowd gathered and I, my mother Roshni Devi, Sunil and Balwant ran away and saved our lives. The police dial 112 vehicle reached the spot at a short distance and admitted us to the Government Hospital, Tohana. During the dispute, my father had received severe injuries which we could not pick up on the spot due to running to save our lives out of fear. Later, my father died due to the injuries sustained in this fight. The above mentioned accused Kamal alias Tony, Omparkash, Rajender and along with them, the other accused have also caused a lot of damage to our vehicles on the spot and have broken all the vehicles. When the above accused went to cultivate our land, they quarrelled with us and injured us. They injured and killed my father Om Parkash. In future we have been given death threats. Therefore, it is requested that strict legal action may be taken against them. Sd/- Vikas, Attested SI OM Parkash No.43, Police Station Sadar Tohana, dated 26.06.2024.'*

### **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 role or specific injury has been attributed to the present petitioner. He further submits that the petitioner was not carrying any weapon. He asserts that the petitioner is in custody since 20.07.2024 and not involved in any other case.

**On behalf of the State**

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 9 months and 10 days.

Learned State Counsel on instructions submits that no specific injury has been attributed to the petitioner.

Mr. Sahil Choudhary, Advocate has put in appearance on behalf of complainant and filed his vakalatnama, which is taken on record. He submits that the petitioner was holding a *danda* and was part of the group, but admittedly no injury is assigned to her.

**4. Analysis**

Considering the facts that the petitioner has already suffered incarceration of 9 months and 10 days and is a person of clean antecedents, as he is not involved in any other case and admittedly no injury whatsoever has been attributed to the petitioner added with the fact that investigation is complete, challan stands presented on 23.09.2024, charges are yet to be framed and total 42 prosecution witnesses are to be examined 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 “**Balwinder Singh versus State of Punjab and Another**”, SLP (Crl.) No.8523/2024. Relevant paras of the said judgment reads as under:-

*“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for*

*the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.*

8. *It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:*

*“I know not whether Laws be right,  
Or whether Laws be wrong;  
All that we know who be in jail  
Is that the wall is strong;  
And that each day is like a year,  
A year whose days are long.”*

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**

**01.05.2025**

*Meenu*

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