



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24667-2024
Date of Decision : **March 19, 2025**

CHAMKAUR SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. Deepak Sabherwal, Advocate
for the petitioner.
Mr. J.S.Rattu, DAG, Punjab.
Mr. H.S.Randhawa, Advocate for the complainant.

SANDEEP MOUDGIL, J. (Oral)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.151, dated 12.10.2014, under Sections 302, 201, 148, 149, 120-B IPC registered at Police Station Sarhali, District Tarn Taran.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Statement of Salwinder Singh son of Gurdit Singh caste Jatt resident of Sarhali aged about 40 years Stated that I am resident of above mentioned address and is am cultivator by profession. I have one son and live daughters. Paddy variety-1509 was brought by my son Gurjant Singh aged 21 years, my servant Swaran Singh son of Ganda Singh caste Jatt resident of village Takhtu Chak and my

brother-in-law's son Satnam Singh son of Sukhdev Singh caste Jatt resident of Sarhali, in Gran Market Sarhali, Our Paddy was not auctioned. We put Tarpaulin on the heap of Paddy and left for our Farm House (Behak). My son was driving his Motor Cycle Platina No.PB-46-L-7159 and my servant Swaran Singh was sitting on its pillion. I was sitting on the pillion of Satnam Singh, my brother-in-law's son. At about 6.30 P.M., we started from Grain Market, Sarhali to our Farm House on the Pacca Road. My son and my servant were ahead of us, whereas myself and Satnam Singh were following them. When we were 200 yards short of G.T. Road, the time was about 07.00 P.M., I saw in the light of the Motor Cycle that Balbir Singh son of Sardool Singh caste Jatt armed with Rifle, Jarman Singh son of Balbir Singh caste Jatt armed with Kirpan, Stalanjit Singh son of Balbir Singh caste Jatt armed with Datar, Uday Singh son of Sukha Singh caste Jatt armed with Datar, Gurdev Singh son of Sukha Singh caste Jatt armed with Datar,, Gurcharan Singh son of Hardev Singh caste Jatt armed with Datar, Chamkaur Singh son of Deba Singh caste Jatt armed with Kirpan, Sukhraj Singh son of Lakhwinder Singh armed with Datar, all residents of village Thatha, along with 7/8 other person, armed with Datars and Kirpans, standing on the road. On seeing my son on the Motor Cycle, Balbir Singh raised Lalkara saying Catch him and teach Gurjan Singh a lesson for picking up quarrel with us. On hearing the 'Lalkara' by Balbir Singh, Jarman Singh, Stalanjit Singh, Uday Singh, Gurdev Singh, Gurcharan Singh, Chamkaur Singh, Sukhraj Singh and unidentified persons, started causing injuries to my son indiscriminately. On seeing this, I along with my brother-in-law's son Satnam Singh, stepped back out of fear and cried loudly "Killed, Killed", at which all the above named assailants ran away towards Hari Ke on the G.T. Road via Canal minor Bridge, Khara, in a Car and Motor Cycles, which were parked near the G.T. Road, with their respective weapons. Myself and my brother-in-law's son Satnam Singh, stepped ahead and saw my servant Swaran Singh falling on the road and my son Gurjant Singh was lying in the Paddy field near the road, with large number of injures on his person. My son breathed his last there and then in my presence due to injuries. My servant had also sustained minor abraisions and the Motor Cycle was also damaged from its front side. I called my brother-in-law's

Sukhdev Singh son of Major Singh caste Jatt resident of Sarhali and my son-in-law Dogar Singh son of Swaran Singh caste Jatt resident of Dhoonda to them. Thereafter, I informed the Police Station on phone and you have reached the spot. Apple of discord is that before this occurrence, a dispute had taken place earlier between my son and assailants. Due to this reason, all of them in collusion with each other, have murdered my son by giving him injuries. The unidentified persons can be identified by me, if they are brought before me. Action be taken against them. I have given my statement, it has been read over to me and it is correct. Sd/- Salwinder Singh, Attested, Sd/ Harjinder Singh, S.I., S.H.O., Police Station Sarhali, 12.10.2014."

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that except showing the presence of the present petitioner carrying a kirpan, no specific role or any injury has been attributed to him. She would further submits that acquittal was earned by three other accused persons, namely, Gurdev Singh, Stalanjit Singh and Gurcharan Singh out of total 8 accused persons vide order dated 4.8.2018 passed by the Additional Sessions Judge, Tarn Taran. She further submits that the petitioner could not be tried together with those acquitted accused persons for the reason that he remained proclaimed offender as declared by the trial Court on 9.1.2015 and thereafter was taken into custody after he surrendered on 10.8.2018. She would further submits that the petitioner is continuing associating himself in the trial Court and without any default being in custody.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record.

He as well as learned counsel for the complainant have vehemently opposed the grant of regular bail to the petitioner and seeks dismissal of the instant petition solely on the ground that the petitioner remained as absconder and was declared proclaimed offender in the year 2015, which caused delay in the judicial process. He further contends that he is not in a position to controvert of the fact that no specific injury has been attributed to the petitioner nor any specific role has come-forth though he was carrying a kirpan at the time of commission of offence.

6. **Analysis**

Be that as it may, having regard to the assertion on behalf of respective counsel for the parties and after going through the record as well as the custody certificate produced today in the Court, wherein, the petitioner is recorded to have suffered incarceration of 6 years, 7 months and 6 days and, wherein out of 17 witnesses only 2 have been examined so far after framing of the charge on 17.8.2021, this Court can infer that the trial will take long time and on that account even an accused cannot be detained behinds bars for indefinite period, which tantamounts to curtailing his right to life and liberty.

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) (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.

7. **RELIEF:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on him 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.

March 19, 2025
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No