



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26789-2025
DECIDED ON: 21.05.2025

VIJAY KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deependra, Advocate and
Mr. Agam Bansal, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS, seeking grant of regular bail to the petitioner in FIR No.0119, dated 21.09.2024, under Sections 109, 115(2), 126(2), 3(5) (Section 117(2) added later on) of BNS, 2023, registered at Police Station Division 4, District Patiala, Punjab.

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

“At this time, a copy of the report No. 36 dated 19.09.2024, from the daily register of Lahori Gate Police Station, Patiala, based on the statement of Baby, wife of Rajesh Kumar, resident of House No. 49-A, Street No. 2, Ram Nagar, Police Station Lahori Gate, Patiala, District Patiala, recorded by ASI Nirankar Singh (2180/Ptl), Lahori Gate Police Station,

Patiala. After investigation, a case has been registered under Sections 109, 115(2), 126(2), and 3(5) of the BNS against Bimla Devi, wife of Prem Kumar, and Vijay Kumar and Ajay Kumar, sons of Prem Kumar, all residents of House No. 49-A, Street No. 2, Ram Nagar, Police Station Lahori Gate, Patiala, District Patiala. The case has been forwarded by CT Gurjant Singh (2346/Ptl) to the concerned police station. The content of the report states: "At the recorded time, a statement by Baby, wife of Rajesh Kumar, resident of House No. 49-A, Street No. 2, Ram Nagar, Police Station Lahori Gate, Patiala, District Patiala, was received by Constable Sukhwinder Singh (2C/2002) and recorded by ASI Nirankar Singh (2180/Ptl) at Lahori Gate Police Station, Patiala, whose detail is as under:- Statement of Baby, wife of Rajesh Kumar, resident of House No. 49-A, Street No. 2, Ram Nagar, Police Station Lahori Gate, District Patiala, aged approximately 45 years, Mobile No. 98725-74066. State that I am a resident of the above-mentioned address. I run a cosmetic shop at Kapoor Chowk, Mathura Colony, Patiala. My husband, Rajesh Kumar, works as a plumber. I have two daughters and two sons. My eldest daughter, Kajal, is studying in Europe on a student visa and is currently visiting India. My second daughter, Sapna, is married and lives in Delhi. My elder son, Vishal, is studying in the 12th grade, while my youngest son, Vipul, is studying in the 8th grade. In our house, my brother-in-law, Prem Kumar, also lives with his family. He, too, works as a plumber. Outside my room, my brother-in-law, Prem Kumar, had placed a bed-like wooden cot, which caused inconvenience while moving in and out of my room. I had requested him multiple times to move the bed to the side. Yesterday, on 18-09-2024, at around 2:00 PM, while I was cleaning the courtyard of my house, I asked my nephew, Ajay, to move the bed from in front of my room. Instead of complying, he started arguing with me and refused to move the bed. Suddenly, in a fit of anger, he struck me with a metal bangle (kara) he was wearing, hitting me below my right eye. Upon hearing the commotion, my sister-in-law, Bimla Devi,

arrived and, shouting, called out to her other son, Vijay, saying, "Today, we will teach her a lesson. In the meantime, Vijay, who was upstairs in our house, came down with an iron rod. The three of them surrounded me, and as soon as Vijay arrived, he swung the rod at me. The blow struck the left side of my head, causing me to bleed. I immediately sat down due to the impact. While I was sitting, Vijay Kumar struck me twice more with the same iron rod, hitting the back of my head. Meanwhile, my sister-in-law, Bimla, started assaulting me with punches and kicks while I was still sitting on the ground. I screamed for help, and upon hearing my cries, neighbors began to gather. Around the same time, my daughter Kajal, who was not at home earlier, arrived. Seeing the crowd gathering, my sister-in-law, along with her two sons along with iron rod, fled from the scene. Due to my severe injuries, my daughter Kajal took me to Rajindra Hospital in Patiala for treatment, where I am currently receiving medical care. During this fight, one of my silver anklet fell off, and an earring from my ear also got lost. My sister-in-law, Bimla, along with her sons Ajay and Vijay, physically assaulted me. Therefore, legal action should be taken against them as per the law. I have given my statement in the presence of my husband, Rajesh Kumar, which has been written down. Upon reading it aloud, I confirmed that it was correct and signed it in Hindi. My husband, Rajesh Kumar, also confirmed the statement and signed it in Hindi. Verified Sd/- Nirankar Singh (ASI), Police Station Lahori Gate, Patiala Dated: 19/09/2024."

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He further contends that the complainant suffered injuries due to accidental fall from the stairs of the house, but in order to grab the portion of the house in possession of the

petitioner, the complainant has got lodged the present FIR against them. It has been further contended that some of the injuries inflicted upon the person of the complainant are grievous in nature but not dangerous to life. It has been contended on behalf of the petitioner that the petitioner is not a habitual offender as he is not involved in any other case. He further asserts that the petitioner is in custody since 09.10.2024 and after completion of the investigation, challan stands presented to Court on 22.11.2024, charges are yet to be framed and total 21 prosecution witnesses are yet to be examined, meaning thereby, the conclusion of the trial will take long time. Moreover, co-accused namely Bimla Devi has already been granted the concession of bail by the trial Court vide order dated 29.11.2024 (Annexure P-14).

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 seeks dismissal of the instant petition on the ground that the petitioner along with co-accused persons have inflicted serious injuries upon the complainant. However, he does not controvert the fact that some of the injuries inflicted upon the complainant are grievous in nature but not dangerous to life.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 07 months and 11 days added with the facts that co-accused namely Bimla Devi has already been granted the concession of bail by the trial Court vide order dated 29.11.2024 (Annexure P-14); the injuries inflicted upon the complainant are grievous in nature but not dangerous to life, as has been admitted by learned State counsel; the petitioner is not a

habitual offender as he is not involved in any other case, as is evident from custody certificate produced today before this Court by learned State counsel; investigation is complete, wherein challan stands presented to Court on 22.11.2024, charges are yet to be framed, total 21 prosecution witnesses have been cited, which is suffice for this Court to infer that the conclusion of trial shall take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve no purpose.

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) 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 Nimesh 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 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.

21.05.2025

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*