

2025:PHHC:065048



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

**CRM-M-25492-2025
DECIDED ON: 15.05.2025**

GOURAV @ GOLU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vinod Gupta, Advocate and
 Mr. Didar Singh, Advocate
 for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

The jurisdiction of this Court has been invoked for the second time under 483 of Bhartiya Nagrik Suraksha Sanita, 2023 for grant of regular bail to the petitioner in FIR No. 198 dated 25.06.2024 under Sections 148, 149, 307, 120B, 201, 341 IPC and 25(1) (b) a & 27 of Arms Act, 1959 registered at Police Station 13-17 Panipat District Panipat (Annexure P-1).

2. **Facts**

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

“To The SHO Police Station Sector 13/17 Panipat. Sir, It is submitted that I Suman wife of Bajinder, am resident of Village Har: Singh Pura Tehsil Ghraunda District Karnal, I have two sons. My elder son Shubham has done BA from OPEN. Second son Nitin doing studies in

Hostel. The Manoj son of Ramphal of our village keeps grudge with us from the last three years. Because in the quarrel nephew of Mano; namely Varinder son of Sillu had died in School from the hands of Shubham. In which the Shubham has come at home on bail. That Manoj and his Bhabhi Seema mother of Veeren earlier also issued threat to us that 'Maut kaa Badla Maut'. We will not leave Shubham alive, they were keeping this grudge. That today time 11:00 AM, my son Shubham went to Ghraunda for preparation of license, time about 5:40 PM after leaving his friend Arjun at Village Pundari proceeds towards his house. When my son on his bullet Motorcycle reached at T-Point of Garhsarnai Panchayati land, then 5-6 unidentified goons fired shots upon my son Shubham, in which one shot hit my son Shubham on arm and one shot at Waist. That due to bullet injury my son fell down there, to whom nearby persons took at GH Panipat for treatment. I do not know that who are these persons who have fire, I have firm doubt that. Garvin, Manoj son of Ram Phal and nis Bhabhi Seema daughter of Sushil due to grudge with intention to kill my son Shubham have got attacked from unknown gangsters. Legal action be taken against them. Applicant Suman M. No.9518645909."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that neither the petitioner has been named in the FIR nor anything has been recovered from his possession. He further contends that the petitioner has been nominated on the basis of disclosure statement suffered by the co-accused Vijay @ Govind.

He further submits that the similarly situated co-accused of the petitioner namely Nikhil @ Janu & Mohit Rana have already been granted the concession of regular bail by this Court vide orders dated 02.05.2025 & 05.05.2025 passed in CRM-M-22583-2025 & 18990-2025 respectively.

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.

She seeks dismissal of the instant petition on the ground that the petitioner along-with co-accused are the members of the gang of Binder Boxer and is doing the work of contract killing. Further more, he hired persons for committing the murder of innocent persons.

4. **Analysis**

Be that as it may, considering the custody period i.e. 09 months and 15 days for which the petitioner has suffered incarceration added with the facts; no incriminating material has been putforth by the prosecution to connect the petitioner with the alleged commissioning of the offence; the petitioner has been nominated on the basis of disclosure statement suffered by co-accused namely Vijay @ Govind; co-accused namely Nikhil @ Janu and Mohit Rana have already been granted the concession of regular bail by this Court vide orders dated 02.05.2025 & 05.05.2025 (Annexures P-2 & P-3 respectively); the petitioner is not a habitual offender as he is not involved in any other case of any nature whatsoever, as is evident from custody certificate apart from that in the present case investigation is complete wherein, after framing of charges on 03.01.2025, out of total 33 prosecution witnesses none has been examined so far, which is suffice for this Court to infer that the conclusion of trial would take considerable time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 *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 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.

15.05.2025
sham

(SANDEEP MOUDGIL)
JUDGE

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