



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

209

CRM-M-27405-2025

DATE OF DECISION: 23.05.2025

ISHANT KAUSHAL ALIAS BUTTI ALIAS BUNGI  
...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Rana, Advocate for the petitioner(s).

Mr. Rajiv Verma, Sr. DAG, Punjab.

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**SANDEEP MOUDGIL, J (ORAL)**

1. **Prayer**

The jurisdiction of this Court has been invoked for the second time under Section 483 of BNSS for grant of regular bail to the petitioner in FIR No. 139 dated 24.10.2024 U/s 115(2), 118 (1), 109, 191, 190 BNS and Section 3(5) of BNS was added later on P.S. Nangal, District Rupnagar.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

*“Statement of Ajay Kumar Bali son of Suresh Kumar Bali resident of village Kalsera, P.S Nangal, District Rupnagar aged 32 years, phone no. 9592744419. Stated that I am resident of the above said address and I am running grocery shop with my father at Kalsera bus stand. At that time Leelu son of Kuki resident of village Rampur Sahni, Shanu resident of village*



*Badsera, Bungi son of Vicky Papad resident of Kalsera son of Suresh Kumar Sahni resident of village Kalsera alongwith 10-11 other unidentified persons were arguing with my father. When he stopped them to argue, they went away. However after 5 minutes they returned with weapons and started quarrelling with him. The unidentified persons boys caught hold him and Leelu gave two Gandasa blows on his right leg. He was smeared with blood. Shanu was having iron handle grari of motorcycle, and hit the same several times on his left leg. Bungi hit on his back with some sharp weapon and the remaining unidentified persons caused severe injuries to him. His father raised a alarm and with great difficulty he rescued him from them. Thereafter all the said persons ran away from he spot with their respective, weapons. Then my family took me to the civil hospital Nangal and I was given first aid and then I was referred to the BBMB Hospital Nangal. Where I am under treatment. Kindly take legal action against the above said accused persons: I recorded and heard my statement. Which is correct. During this my mobile and money was also misplaced. Sd/- Ajay Kumar Bali attested by Tajinder Singh PP Naya Nangal on dated 6.10.2024"*

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. He submits that MLR do not indicate any injury to have been caused with sharp edged weapon as there are only bruises on the back of the injured and the injury No. 3 is declared simple in nature. He further submits that all the injuries suffered by the complainant are on non-vital parts, hence, offence under Section 109 is not made out. He has further argued that the antecedents of the petitioner are clean. He submits that similarly situated co-accused namely Nikhil @ Nikki has already been granted concession of regular bail by this Court vide order dated 08.05.2025 passed in CRM-



M-23831-2025 (Annexure P-4). Moreso, the investigation in this case is complete as challan stands presented on 17.02.2025, charges are yet to be framed and 8 prosecution witnesses have been cited, which is sufficient to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

**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.

He seeks dismissal of the present petition, by placing undue emphasis on Injuries No. 1 and 2, which have been declared as dangerous to life as is evident from MLR issued by Medical Superintendent, District Roopnagar. However, it is admitted that Injury No. 1 is located on the calf and Injury No. 2 is an incised wound near the calf, which are situated on non-vital parts of the body and do not appear to be life-threatening, but have been termed as such solely because the weapon used was a *gandasa*, a sharp-edged instrument, which would otherwise typically cause only grievous injury.

**4. Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 05 months and 27 days added with the facts that there is no sharp edged weapon injury as there are only multiple bruises even as per the MLR which have been attributed to the petitioner; the injuries attributed to the other co-accused persons are on non-vital part of the body; 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, challan stands presented to Court on 17.02.2025, charges are yet to be framed and total 08 prosecution witnesses are yet to be examined, 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)  
JUDGE

23.05.2025  
anuradha

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