

2025:PHHC:070305



222

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

**CRM-M-27648-2025
DECIDED ON: 23.05.2025**

ALTAF KHAN

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Singh Jattan, 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 Section 483 of the Bharatiya Nagarik Suraksha Sanita, 2023 for grant of regular bail to the petitioner in case FIR No. 13 dated 30.01.2019 (Annexure P-1) under Section 394, 395, 396, 397, 302, 120-B, 216, (Section 149 and 412 PC added lateron) of Indian Penal Code 1860 and Section 25 of the Arms Act, 1959, registered at Police Station Sector-20, Panchkula, District Panchkula.

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

“The copy of the complaint is as under; To The SHO Sahib, Police Station Sector 20, Panchkula, Sir, it is requested that I, Vinod Kumar

S/o Mr. Pawan Kumar Agarwal am resident of Flat No. 17, GH 25, Sector 20, Panchkula. I have taken half share of the FIRST. FLOOR of SCO No. 392, Sector 20, Panchkula on rent for two months. In which lam work in Property and Finance. Which, today evening around 5-5.30 P.M. I. was playing cards sitting with 10-12 friends in my shpwroom. At that time suddenly 8-10 young boys came in through the door. All of them were carrying pistols in their hands and were also holding 3-4 helmets. Those, who had two backpacks also with them. As soon as they entered inside, they gave 2-3 fire shots towards us. After that they all came to us. All of them showed fear of pistols to all of us with pistols in their hands and asked us to take out all the cash and jewellery you have and put them in our bag, when 2-3 boys refused to give cash, those young boys started hitting with the helmet and started scuffling. In the meantime, 2-3 boys shot two boys with pistols/revolvers in their hands and while firing snatched money, mobile and our ring, chain and gold and ran away. When they opened fire, one boy, Sunny, jumped down from the window in fear. Those who have been shot and who have been injured by jumping all admitted in the hospital. can recognize all these young boys as they come forward me. Legal action should be taken against these unknown young boys who have looted with us. After asking for the list of all the looted goods, we will provide it to you later.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner seeks parity with co-accused Irfan @ Kaatu, who was granted the concession of regular bail by this Court vide order dated 14.05.2025, passed in CRM-M-57288-2024 (Annexure P-2). Additionally he submits that the petitioner has been falsely implicated in the present case and the FIR was registered against unknown persons and he was implicated after four

months of the incident on the basis of disclosure statement of co-accused Jitender Kumar @ Jony.

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 5 years 11 months and 9 days. He does not controvert the fact that the petitioner is at par with the co-accused Irfan @ Kaatu.

4. **Analysis**

Considering the facts that the petitioner has already suffered incarceration of 5 years 11 months and 9 days and is is a person of clean antecedents; similarly situated co-accused has already been granted the concession of regular bail by this Court vide order dated 14.05.2025, passed in CRM-M-57288-2024 (Annexure P-2) added with the fact that after framing of charges on 04.12.2020 out of total 79 prosecution witnesses, only 37 witnesses have been examined so far, which is suffice for this Court to infer 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

23.05.2025

Meenu

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