



214

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28735-2025
DECIDED ON: 28.05.2025

MOHAMMED YOUNAS @ MOHAMMAD YOUNIS
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohd. Yusuf, 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 439 Cr.P.C for grant of regular bail to the Petitioner in FIR No.27 dated 07.04.2024 under Section 379-B IPC (offence u/s 307, 120-B, 341, 411 IPC and Section 207 Motor Vehicles Act added later on), Police Station: Sri Chamkaur Sahib, District Rupnagar, Punjab (Ann. P-1).

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

“Copy of Application no. 345/Dasti PS CKS dt. 07-04-2024, To, SHO PS Sri Chamakaur Sahib, Sir, it is submitted that I Sahil Bhardwaj son of Rohit Kumar I am resident of Bank Colony Sri Machiwara Sahib and working in Aarti International Limited Company. Today on 7.4.2024, I along with my friend Amit Kumar son of Kartar Chand resident of Bank Colony Sri Machiwara Sahib was going to Naina Devi on my motorcycle number HP36A-3867. When we crossed the Dholra bridge, at around 6.15 AM, a white colored Zen car without number came from behind us, the driver of

the same turned his car and brought it in front of our motorcycle and stopped us. Suddenly three young men got out of the car while the driver remained in the car. They had covered their face with black cloth and were having swords in their hands. They surrounded us. As soon as we got off, they snatched away our mobile phone brand Samsung M12 having Sim No. 70182-82596, 90567-22596 and Marka Vivo T2 5G having Sim No. 98777-15616, 98821-37681 and our wallets containing our documents. The above said young men fled away from the spot in their ZEN car having no number plate. Kindly, take necessary legal action against the above mentioned young men.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the petitioner along with his co-accused persons had snatched the mobile phones make Samsung M-12 and Vivo T2 5G along with purse from the possession of Amit Kumar on 07.04.2024 at about 7:15 PM while blocking his way by means of a Zen Car of white color without registration number and threatening him with Kirpans. He further contends that nothing has been recovered from the conscious possession of the petitioner and is in custody since 13.04.2024. It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case. He further asserts that similarly situated co-accused namely Deepak Singh has already been granted the concession of regular bail vide order dated 09.04.2025 passed in CRM-M-18542-2025 (Annexure P-4).

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 his co-accused persons had snatched the mobile phones make Samsung M-12 and Vivo T2 5G along with purse from the possession of Amit Kumar on 07.04.2024 at

about 7:15 PM while blocking his way by means of a Zen Car of white color without registration number and threatening him with Kirpans.

4. **Analysis**

Be that as it may, considering facts that the custody period i.e. 1 year, 1 month and 23 days for which the petitioner has suffered incarceration; similarly situated co-accused Deepak Singh has already been granted the concession of regular bail vide order dated 09.04.2025 (Annexure P-4) and the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 05.07.2024, charges have been framed on 21.10.2024 and out of total 11 prosecution witnesses only 02 witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long 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 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.

28.05.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No