

2025:PHHC:092448



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

**CRM-M-38243-2025
DECIDED ON: 24.07.2025**

DODIYA MOHITBHAI ANILBHAI

.....PETITIONER

VERSUS

STATE OF HARYANA & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. G.S. Ghuman, Advocate with
Mr .P.S. Maan, Advocate
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked 2nd time for the grant of regular bail to the petitioner in FIR No. 02, dated 11.01.2025, under Sections 318(4), 319(2), 61(2), 238, 241 of BNS and 66-C and 66-D of IT Act, registered at Police Station Cyber Crime, Kurukshetra.

2 Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is further submitted that the FIR has been misused by the police officials as a means to harass and exert undue pressure on the petitioner in order to compel compliance with their unjustified demands. It is asserted that no recovery was made from the

petitioner during the raid. Moreover, not a single rupee was transferred to the petitioner's account, nor was the petitioner the individual who contacted the complainant or instructed the transfer of the alleged amount. He relies upon the order dated 27.05.2025 (Annexure P-2) passed by this Court in CRM-M-28299-2025 vide which similarly co-accused namely Bura Pardeep Venkateshvarlu @ Kundan has been granted the concession of regular bail.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner in Court today, which has been taken on record. He opposes the present petition and seeks its dismissal on the ground that during disclosure the petitioner himself disclosed that he has given his account to Ashish for utilization at 2% commission, who further disclosed that he had given the account of the petitioner to Ankit for utilization, meaning thereby, the petitioner is an active member of a gang involved in defrauding individuals by making fraudulent calls.

4. Analysis

Be that as it may, considering the fact that the petitioner is a person of clean antecedents, who has suffered incarceration for a period 5 months and 28 days, as of now and similarly co-accused namely Bura Pardeep Venkateshvarlu @ Kundan has already been enlarged on bail vide order dated 27.05.2025 (Annexure P-2); added with the facts that in the present case challan stands presented on 25.03.2025 wherein, the prosecution has cited 12 prosecution witnesses and charges are yet to be framed, 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.

24.07.2025
sham

(SANDEEP MOUDGIL)
JUDGE

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