



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

216

CRM-M-40717-2024
DECIDED ON: 22.01.2025

HARMANPREET SINGH @ HARMAN

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Umaid Singh Mann, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 of BNSS, 2023., has been invoked 2nd time by the petitioner for the grant of regular bail to him in a case bearing FIR No.25 dated 01.05.2015, under Sections 302, 148, 149 and 221 IPC, registered at Police Station Fatehgarh Churian, District Batala.

2. Facts

Prosecution story set up in the present case as per the version in the FIR read as under :-

“Statement of Jasmeet Singh S/ Nachhatar Singh caste Jat R/o Baddowal Khurd PS Fatehgarh Churian age around 25 years have given a statement that I am the resident of the abovementioned address and I am an agriculturist and we are two brothers that in my relations Dilbag Singh S/o S. Narinder Singh is my paternal uncle (Chacha) Dilbag Singh has one son



namely Harmeet Singh who is around 28 years old who is married for the last one month. That on dated 30-4-15 around 10-30 PM that after closing my shop, I was going back to my village. When I reach near the bus stand of a ticket chootiya there I saw my paternal uncle son Harmeet Singh son of Dilbagh Singh and his two friends Sardool Singh son of Ajit Singh cast Jat resident of Badwal Kalan, Sarabjot Singh, son of Harvinder Singh, cast Jat resident of Fatehgarh, Churian and Dilsher Singh, son of Gurtej Bir Singh, caste, Jat resident of Badwal College, whom all I know from befor who all were standing outside Pappu Dhaba. Then one unknown person who was holding a knife and was hurling abuses and three unknown people were standing at some distance. That in front of me, one of the person who had a nice in his hand, attacked Sarabjit Singh on his left side and injured him and then towards Ajnala Road. Then that in order to protect him my uncles son, Harmeet Singh and Sardool Singh step forward and the unknown persons attacked and the unknown person who was holding knife attack Sardool Singh on his left and then while I was watching that unknown person who was holding a knife stabbed Harmeet Singh in his chest on the left side which hit his heart and he fell on the ground and the unknown persons ran behind Sardool Singh and Dilsher Sin who ran away from their end. After going around, the bus stop came back to the spot and the unknown person who was holding the knife in his hand raised it and said I am Mainu of Mama Chak who is and runaway from the pot spot. These unknown people who were there were calling each other's name and that time nearby was a PCR on night duty in which were present so into but they took no action of catching the cute and then when I came forward to see Harmeet Singh who was badly injured and was in pain then I, Dilsher Singh and Sardool Singh were taking Harmeet Singh to the doctor for treatment then one of the officials namely Palwinder Singh PHC took out the car keys of the car of Harmeet Singh and then I alongwith



my associates picked Harmeet Singh and took him to Sandhu Hospital, Fatehgarh Churian where we got him checked up and the doctor then told us that as he is badly injured we should take him to the city. I brought Harmeet Singh took him to the Government Hospital, Fatehgarh Churian where doctors declared him to be brought dead and the deadbody is lying at Civil Hospital, Batala Sarabjot Singh is under treatment at Guru Nanak Dev Ji Hospital, Amritsar and Sardool Singh at Civil Hospital, Fatehgarh Churian. That the four officials who were present at the spot did not inform there senior officers of the incident and have also helped the accused to flee after committing the offence. Manu r/o Mehmachak along with unknow persons has committed this incident and the above-mentioned officials are also involved in this incident and till now I have been trying to trace the unknown people on my own. That I have given my statement which has been read to me, understood by me.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the earlier petitioner was granted the concession of regular bail by this Court vide order dated 31.08.2016 passed in CRM-M-28933-2016 (Annexure P-2), on account of the fact that the respondent-State, on instructions had stated that no overt act had been attributed to the present petitioner. Later on vide order dated 27.01.2020 the petitioner was declared proclaimed offender. It is submitted on behalf of the petitioner that the petitioner was arrested on 07.03.2020 in another case i.e. FIR No. 17, dated 26.02.2020, wherein, he is already on bail. It is further submitted that the application seeking regular bail was moved by the petitioner, which was dismissed vide order dated 16.03.2023 by the trial Court and it was only after the passing of the said order, he came to know that he was still being



considered as proclaimed offender in the present FIR, as neither had the production warrants been issued nor had been taken into custody in the present case.

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. According to which, the petitioner has suffered incarceration for a period of 2 years 5 months and 18 days, as of now. He prays for dismissal of the present petition stating that the petitioner is also involved in other cases, meaning thereby, he is a habitual offender. Moreover, he was declared proclaimed offender in the present case, however, does not controvert the fact that earlier the petitioner was granted the concession of regular bail by this Court vide order dated 31.08.2016 (Annexure P-2) considering the averment made by the respondent-State that no over act had been attributed to the present petitioner. He informs the Court that in the present FIR after framing of charges on 20.02.2016, out of total 25 prosecution witnesses only 15 have been examined so far.

4. **Analysis**

Be that as it may, considering the fact that the petitioner was earlier granted the concession of regular bail by this Court considering the fact that no overt act had been attributed to him and he was only present with the main accused as well as the custody undergone by him, added with the fact that after framing of charges on 20.02.2016, out of total 25 prosecution witnesses, only 15 have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an



indefinite period would solve no purpose and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt.

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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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 “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “Baljinder Singh alias Rock vs. State of Punjab” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.



5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail subject to his furnishing bail/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

22.01.2025
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>