

2025:PHHC:036462



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

**CRM-M-53565-2024 (O&M)
DECIDED ON: 18.03.2025**

PARAMJIT KAUR AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhimanyu Kalsy, Advocate
for the petitioner No.2.

Mr. Jaspal Singh Guru, AAG Punjab

Mr. M.S. Batth, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

CRM-6946-2025

Application is allowed, as prayed for.

Annexure P-5 is taken on record subject to all just exceptions.

CRM-M-53565-2024

1. Relief Sought

This petition has been filed under Section 482 of BNSS, 2023 for grant of regular bail in FIR No. 0075 dated 06.09.2024 registered under Sections 115(2), 118, 333, 109, 296, 351(2) and 3(5) (Section 238 added later on) of BNS, 2023 at Police Station Jodhan, District Ludhiana Rural, Ludhiana.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Malkit Singh S/o Ajmer Singh R/o Village Lohgarh, P.S. Jodhan, District Ludhiana, age about 64 years, Mobile No. 95928-24220. Stated that I am resident of above address and doing agriculture. On 04-09-2024, it would be around 2-00/2-30 in the afternoon, I and my brother Avtar Singh were present at the house, and the main gate of our house, which is visible from the other side, was knocked loudly. Hearing the sound, my brother Avtar Singh came into the courtyard and behind him, I also came outside in the courtyard and saw that our neighbor Amandeep Singh son of Davinder Singh, his mother Paramjit Kaur and his father Davinder Singh son of Mewa Singh was breaking the gate of our house and was abusing, to whom my brother Avtar Singh was going ahead of me towards the gate, saying, stop, don't break the gate. Amandeep Singh who was holding an axe in his hand, came in and while I was watching, he hit my brother Avtar Singh on the head with his axe, which hit my brother Avtar Singh on the head. Due to which my brother Avtar Singh fell on the ground, then Amandeep Singh, his mother Paramjit Kaur and father Davinder Singh dragged out my brother Avtar Singh into the street, and Amandeep Singh, who had fallen down, with the intention of killing him attacked on his head second time with his axe. Then while I was watching, Paramjit Kaur hit my brother's legs with her hand rod and Davinder Singh hit my brother Avtar Singh's right wrist with his hand reversed hoe. When I screamed 'Marta Marta' to save my brother Avtar Singh, Amandeep Singh hit me with his axe on my head, which hit on my forehead above the right eye. Then his mother Paramjit Kaur said that don't let him go dry. He has to be killed today too. Then Davinder Singh hit his hand reversed hoe on my right shoulder. On my hue and cry and on seeing gathering the neighbours there, they all three ran away from the spot alongwith their weapons with the threats to kill and giving abuses. Then Raghvir Singh son of Sukhdev

singh of our village arranged a vehicle and took me and my brother Avtar Singh to Civil Hospital Pakhowal for first treatment. Where the doctor referred to Civil Hospital Ludhiana after giving first treatment. Since my brother Avtar Singh's health was deteriorating, he was sent to DMC Hospital Ludhiana for treatment, who is under treatment. I returned to home yesterday on 05.09.2024 after getting treatment from Civil Hospital, Ludhiana. Today I came to the police station alongwith my nephew Jagraj Singh son of Avtar Singh and statement has been got recorded to you, heard, understand and is correct. An appropriate strict action be taken against them.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioners submits that the petitioner No.1 has already been granted the concession of bail vide order dated 24.12.2024.

He argued that the petitioner No.2 has been falsely implicated in the present case and there is inordinate delay of 2 days in lodging the FIR by the complainant. He submits that the complainant and his associates attacked upon the petitioner No.2 and caused him head injuries. He asserts that the petitioner No.2 is old age and is heart patient, who is suffering from hypertension, weak eye-sight, knee problem and frozen shoulder and is also unable to walk properly, which proves the frivolous nature of allegations upon him.

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 No.2, which is taken on record. According to which, the petitioner No.2 is behind bars for 6 months and 10 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that there are serious

allegations against the petitioner No.2 gave blows with the reverse side of spade on the right wrist of the brother of the complainant and on the right shoulder to the complainant.

4. **Analysis**

Considering the custody period undergone by the petitioner No.2 i.e., 6 months and 10 days, who is senior citizen and suffering from various ailments added with the fact that investigation is complete, challan stands presented on 04.11.2024, charges are yet to be framed and thereafter total 18 prosecution witnesses are to be examined. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner No.2 behind bars for uncertain period. There is a fundamental postulate of law that “*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 “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.

5. **Relief:**

In view of the discussions made hereinabove, the petitioner No.2 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.

Pending application(s), if any shall dispose off accordingly.

(SANDEEP MOUDGIL)
JUDGE

18.03.2025

Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No