



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

310

CRM-M-56443-2024

DATE OF DECISION: 03.02.2025

PARVEEN

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Kotla, Advocate for the petitioner(s).
Mr. S.S. Pannu, Addl. A.G, Haryana.

SANDEEP MOUDGIL, J (ORAL)

In pursuance to the previous order dated 09.01.2025, Ms. Astha Modi, IPS, the Superintendent of Police, Fatehabad is present in Court.

Learned State Counsel has filed reply by way of affidavit of Astha Modi, IPS, Superintendent of Police, Fatehabad, the same is take on record. Copy of the same has been furnished to the counsel opposite.

Ms. Astha Modi, would elaborate that initially the injured was admitted to Sapra Hospital, Hisar at his own will and thereafter, he went to Civil Hospital for medico legal opinion and again on their reference went back to the Sapra Hospital for further treatment and got conducted the surgery. She would further state that it is under these circumstances, the second opinion of the Sapra Hospital was obtained by the Investigating Officer and as such, by following the due procedure, medico legal report was prepared wherein an opinion from Sapra Hospital and thereafter, Dr. Rahul, Civil Hospital, Hisar also after examination of record opined that the injury No.1 is so grievous that is dangerous to life, thus, Section 307 IPC was added later on. Ms. Astha Modi also explained that owing to the time consuming procedure, it took couple of



days to get the joint opinion, otherwise there is no delay since he was operated on 29.02.2024 at Sapra Hospital, Hisar.

In light of the above, I do not feel any necessity to go further into the issue and thus, the presence of Ms. Astha Modi, IPS, Superintendent of Police, Fatehabad is not required any further.

1. **Relief Sought**

This petition has been filed under Section 483 BNSS for grant of regular bail in FIR No. 43 dated 21.02. 2024 under Sections 307, 323, 324, 326, 341, 506, 201, 34 of IPC, registered at Police Station: Bhattu Kalan, District Fatehabad. (Annexure P-1).

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

‘Sir, it is submitted that I am resident of above said address, doing household work and my husband is doing agriculture work, I have two sons namely elder is Balraj and younger is Sanjay both are married. On dated 17.02.2024 at about 7:30 PM my son Sanjay after taking meal was going towards house of his uncle, then her son Sanjay called 2-3 times, in the way, to rescue him, then she along with his daughter-in-law went there, then they found that some boys were causing injuries to her son with knives and her son Sanjay was lying on the ground in injured condition. And they did not let her to go near to her son and they started throwing stones towards her and her daughter-in-law. When she raised hue and cry, then persons from our family and my other neighbour rushed to the spot and on seeing them, assailants fled away from the spot, and some of them ran from there I could not identified and assailants were Parveen s/o Jagdish, Sudama son of Moti Ram; Dholu son of Moti Ram and Moti Ram son of Harnam. They have also cut the electricity while the quarrel taken place. Assailants while fled away from the spot, raised threat of life to her and her family members if any police action is taken against them. Earlier also, the Parveen opened attack upon her husband. So, it



*there for prayed that please take legal action against them,
Thanks. Statement is recorded and same is correct.'*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that the only injury attributed to the petitioner is that he gave injury on the finger of the left hand and that too is declared to be simple in nature according to the Medico Legal Report, therefore, prays for grant of regular bail to the petitioner.

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 is behind bars for 10 months and 29 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in other FIRs also including FIR No. 476/2022 dated 06.10.2022 under Sections 307, 201, 120-B, IPC, at P.S. Tohana, Fatehabad due to the allegations that he gave injuries to the father of the victim in the present FIR but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. **Analysis**

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 10 months and 29 days and the only injury attributed to the petitioner is on the finger of the left hand and that too is declared to be simple in nature



and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 10.05.2024 charges stands framed on 27.09.2024 out of 16 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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.



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 on his furnishing bail and 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

03.02.2025
anuradha

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