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2025:PHHC:053911



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56370-2024
DECIDED ON: 28.04.2025

SUBHAS ALIAS SUBE

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saleem Ahmad, Advocate for the petitioner.
Ms. Mayuri Lakhanpal Kalia, DAG Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail in FIR No. 1528 dated 26.09.2022 registered under Section 323, 506 of IPC later on added Section 302, registered at Police Station Shivaji Nagar, District Gurugram.

2. Facts

Facts as narrated in the FIR reads as under:-

“To P.S Shivaji NAGAR DISTT GGM Statement of Praveen S/O Shri Kishan Lal Caste Balmik R/O [H.NO](#) 206/20 Gali NO-2 [H.NO](#) Om Nagar Near SD School GGM, Age 32 years 9958570028 stated that I am a permanent resident of the above address and do labour work. On 19.09.2022, I left home in search of labour work. Thereafter, I met Dharam S/O Shri Hari Singh R/O. Om Nagar at Labour Chowk. We did not get work there, so we drank alcohol there. Thereafter, on the other side of the road in front of Rama Hospital, Dharam started

gambling, I was also standing there with Dharam. After that, Dharam got into a fight with an unknown person over some issue, whose name I do not know. He comes to Labour Chowk in search of work. During this, Dharam got into a fight and that boy hit me in my stomach with a brick due to which I fell down on the ground. After that, he picked me up from the ground and said that today I will kill you and in the meantime, seeing the public coming there, he threatened to kill me and ran away and said that today you are saved but in future I will kill you. After that I become unconscious. After that my father came and took me home but due to my ill health, he took me to a private hospital. But due to the demand for more money, my father admitted me to Delhi Safdarjang Hospital on 21.09.2022, where I am undergoing treatment till today. I and my family members have been getting me treated till now, today my mother informed the police about this, after getting the information, today I have written my statement to you, read it, which is correct, please take legal action against the above.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He further submits that even if the version narrated in the FIR are taken to be gospel truth still the case of Section 302 is not made out against the petitioner. In support of his argument, he contend that the mens rea and the knowledge of causing death by such an act is totally absent. He relies upon a judgment of the Apex Court in *Navjot Singh Sidhu vs. State of Punjab AIR 2007 SC 1003*.

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 reply by way of an affidavit of Abhilaksh Joshi, HPS, Assistant Commissioner of Police, City Gurugram, which is taken on record.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the allegations against the petitioner are serious in nature, wherein he gave a brick blow to the victim, who thereafter died.

4. **Analysis**

Be that as it may, considering the facts that the mens rea and the knowledge of causing death by such an act is totally absent; the petitioner has suffered incarceration of 2 years, 5 months and 28 days and is not involved in any other case, as is evident from the perusal of the custody certificate added with the fact that investigation is complete after framing of charges on 02.03.2023 out of total 24 prosecution witnesses 13 have been 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 behind bars for uncertain period, wherein “*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 Nimesh 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 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.

(SANDEEP MOUDGIL)
JUDGE

28.04.2025

Meenu

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