



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CRM-M-59535-2024
DATE OF DECISION: 10.01.2025

GAUTAM KUMAR

PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Yajur Sharma, Advocate and
Mr. Ankur Sharma, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

This petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for grant of Regular Bail to the petitioner in FIR No. 177 dated 14.05.2022 registered at Police Station Islamabad, District Amritsar, for offences punishable under sections 302, 148, 149, 120-B of IPC to which section 201 and 342 of IPC, have been added later on.

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

‘To the Station House Officer, Islamabad, Amritsar. 1 along with SI Kashmir Singh, Constable Amanbir Singh, Lady HC Satnaam Kaur, lady constable Baljinder Kaur along with kit laptop and printer in our private vehicle were present at chownkKotKhasla in connection in patrolling and search of bad elements where SI (Sulakahan Singh) received secret information that a person named Preet who is residing as a tenant in the house of Sukhjinder Singh son of Harvinder Singh R/o Hne 7/263, Kot



Khalsa, Amritsar, at about 12:20 AM went to the house of Lakhbir Kaur wife of late Sukhdev Singh r/o Navi Abadi. Baba Jeewan Singh Gurudwara KotKhasa, Amritsar to meet her daughter Rajji @ Muskaan wife of Ninder Singh @ Ghulla resident of village Nangli P.S Kamboj, Amritsar who resides with her mother Lakhbir Kaur. That Rajji (@ Muskaan is in a live-in relationship with Preet. Preet started to force Rajji @ Muskaan in front of her mother Lakhbir Kaur to marry him to which Rajji@ Muskaan along with her mother Lakhbir Kaur, son of Rajji's aunt Guatum Kumar who was already present in the house, Raul and Babbu in furtherance of a common intention have given beatings to Preet with iron rods, "kahi" and other different weapons, reach at the spot immediately. On which SI along with other police officials on their private vehicles reach the spot at the house of Lakhbir Kaur and found that Preet had multiple injuries on his body was in an unconscious state, to which after arranging for a conveyance was taken to civil hospital, Amritsar where medical officer was requested to admit him and do his check- up, who further issued OPD Slip No. 10164 dated 14/05/2022 declared Preet as dead. That the dead of Preet was kept in the mortuary for a period of 72 hours for identification. That Rajji @Mushkaan, her mother Lakhbir Kaur, son of Rajji's maternal Aunt Gautam Kumar son of Ashok Kumar, her relatives Rahul resident of Indira Colony and Babbu and other persons in connivance with each other have caused serious injuries to a person named Preet using iron rods, handle of spade and other different weapons and have murdered him. That offence under section 301, 120-B, 148, 149 IPC is made out against the accused persons.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has submitted that he seeks parity with the co-accused namely Harjit Singh @ Rahul, Lakhbir Kaur and Rajbir Singh @ Babbu who all have been granted the concession of regular bail by this Court vide order dated 17.09.2024



passed in CRM-M-8566-2023, CRM-M-41576-2022 and CRR-2186-2022 (Annexure P-5). He has further submitted that PW-2-Gurpal Singh and PW-3 Sukhjinder Singh who were witness to prove the relationship of the deceased with Rajji @ Muskan have both turned hostile, moreso, there is no evidence to show that the deceased-Preet and Rajji @ Muskan (daughter of Lakhbir Kaur) were in relationship. It is his further contention that investigation in this case is complete as challan stands presented on 17.08.2022, charges have been framed on 08.12.2022 and the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 2 years, 7 months and 17 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that serious allegation of murder has been levelled upon the petitioner, 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. 2 years, 7 months and 17 days, similarly situated co-accused have already been granted concession of bail by this Court, antecedents of the



petitioner are clean, meaning thereby he is not a habitual offender, PW-2-Gurpal Singh and PW-3 Sukhjinder Singh both turned hostile added to the fact that the culpability of the petitioner would be decided during the trial 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 17.08.2022 charges stands framed on 08.12.2022 out of 24 prosecution witnesses, only six PWs 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 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



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 436 A 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.

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

10.01.2025
anuradha

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