



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

218

CRM-M-61535-2024

Date of decision: 10.02.2025

Ram Bhadhur @ Ram Bahadur**.....Petitioner****Versus****Union Territory, Chandigarh****.....Respondent****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Mohit Malik, Advocate with
Ms. Supriya Arora, Advocate for the petitioner.

Mr. Manish Bansal, P.P, UT, Chandigarh.

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

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail for the petitioner in FIR No.0163 dated 18.11.2022 under Section 324 IPC (Section 326 IPC added later on) registered at P.S South Sector 34, Chandigarh.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ Statement of Subash Rawat son of Remant Rawat resident of House No.1617, Village Burail, Sector-45, Chandigarh aged 23 Years Mobile No.88378448557 stated that I am residing as tenant at the above given address and does the work at Majbin Restaurant, Burail. On the night of dated 17/18.11.2022 I along with my friends Netra Busant and Ram Bhadhur Ramu got drunk liquor at H. No. 1545 Village Burail, Near Ramlila Ground and it



was about 02:30 AM, Ram Bahadur Ramu started abusing us in the influence of liquor and he started fighting with Netra Busant and that I intervened and sent Ram Bahadur @ Ramu from there. Then we were near House No. 1545. Village Burail, Ram Bahadur Ramu again came back, who was holding knife in his hands and immediately on arrival, he many times attacked on Netra Busant. He attacked on left side of his mouth many times and on the left side of abdomen and on his hand and when I shouted, he tried to flee from the spot and he fell down while running near the wall of Ram Lila Ground and he again stood up and fled from the spot. I shouted a lot. Then Netra Busant's brother-in-law namely Deepak came reached there while searching for Netra Busant. When he arrived Netra Busant's clothes were stained in blood and blood was scattered in the street as well. I and Deepak took Netra Busant to Civil Hospital, Sector 45, Chandigarh for treatment. There Doctor checked Netra Busant and referred to GHCH Sector 32. Netra Busant is admitted at GMCH, Sector 32, Chandigarh in unconscious condition. That Ram Bahadur @ Ramu has injured Netra Busant by attacking him with sharp edged knife. That strictest legal action be taken against Ram Bahadur @ Ramu son of Jit Bahadur resident of H. No. 417, Sector 45-A, Chandigarh. Statement has been recorded; I have heard the same. It is correct. ”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case as he was not present at the spot when the alleged incident took place. Initially, the present FIR was registered under Section 324 IPC and the petitioner was released on bail. After a gap of more than one year, Section 326 IPC has been added in the present FIR only in order to make the offence non-bailable. He further asserts that the petitioner has no criminal past antecedents and has already suffered incarceration for the last 11 months and 18 days and no purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time.

**On behalf of the State**

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate today in Court according to which he has suffered 11 months and 18 days of custody. However, he submits that the petitioner has inflicted serious injuries on the person of one Netra Bhusant.

Analysis

5. Be that as it may, petitioner has suffered sufficient incarceration of 11 months and 18 days. Further, 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

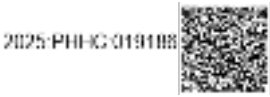


*custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in **In ReInhuman 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.”*

6. 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 as 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 the 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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of BNSS, 2023 on him 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

10.02.2025
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No