



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

CRM-M-64278-2024

DATE OF DECISION: 09.01.2025

MEHTAB SHARMA

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in Case FIR No. 220, dated 19.08.2023, under Sections 302, 34, 120-B IPC, Sections 25, 27, 29 of Arms Act, 1959 and Sections 21 and 29 of NDPS Act, 1985, registered at Police Station Jandiala, District Amritsar.

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

“Statement of Manni wife of Ramsharan resident of Near Ashu Club Gaushala Road, Jandiala Guru, District Amritsar age about 35 years, 6280451391 that I am the resident of the above said address and do the domestic work. I have five children from them four are boys and one is girl. Girl is about 3 years old. My husband Ramsharan is a labouror, who today went to the house of his brother Satpal Singh alongwith his younger daughter in his car bearing no. HR 02 P 2842 make Zen Color Gray in ward no. 7. When my husband today at time about 12 AM came back at the door of his house in his car then my daughter was with him then after hearing the noise of



the horn, I opened the door of my house then while seeing by me, four unknown persons on two motorcycles from them two were holding the pistols and by coming started to shoot my husband Ramsharan Singh while sitting in the car. After crossing the bullets from the front glass and side hit approximately 5-6 bullets to my husband. My husband already make my daughter sit towards foot. I raised voice in loud manner maar ditta maar ditta then the above said unknown persons alongwith their weapons fled away from the spot on their motorcycles. Reason behind the grudge is that my husband had fallen in the bad company and due to that he had relations with bad kind of persons from them today somebody have fired the shots upon my husband. We were taking my husband Ramsharan to the hospital for treatment. Who has died on the way. Whose dead body is lying in Guru Ramdass Hospital, Vallah. I by leaving my son Gagandeep Singh near the dead body was coming alongwith my elder brother in law Satpal Singh to give the information to you but you have met near the gate of the hospital. By searching the unknown persons. Appropriate legal action may be taken. Statement has been got recorded to you, heard, it is correct. RTI Manni.”

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. It is submitted on behalf of the petitioner that neither the petitioner was named in the FIR nor it has come in the investigation that he was present at the alleged place of occurrence. Moreover, the petitioner was not armed with any kind of weapon and he has been arrayed as an accused on the basis of alleged secret information and except that there is no other incriminating evidence against him in order to connect him with the alleged crime. Apart from that he is seeking regular bail on the ground that PW-1 Mahni-complainant has turned hostile, as is evident from her deposition dated 03.12.2024 (Annexure P-4/A).

**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.

Learned State Counsel would thought reiterate the allegations as emerging out in the FIR i.e. qua the role of the petitioner for supplying weapons. He informs the Court that in the present FIR challan stands presented on 24.11.2023 and charges stands framed on 06.09.2024. He prays for dismissal of the present petition stating that the petitioner is involved in various other cases, meaning thereby, he is habitual offender.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration of 1 year, 4 months and 6 days and after framing of charges on 06.09.2024, out of total 26 prosecution witnesses none has been examined so far, which is sufficient for this Court to infer that the conclusion of trial shall take considerable time added with the fact that PW-1/complainant has turned hostile, hence there is every probability of earning acquittal, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, 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 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.

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 her 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

09.01.2025
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>