



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-63125-2024
DATE OF DECISION: 27.01.2025

LAKHWINDER SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Dhillon, Advocate for the petitioner(s).

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 BNSS for grant of regular bail to the petitioner in FIR No. 64 dated 08.05.2020 u/s 341, 323, 506, 148, 149 of Indian Penal Code, 1860 (Section 302 of Indian Penal Code, 1860 added later on vide rapat No. 31 dated 21.05.2020) registered at Police Station Sadar Ferozepur, District Ferozepur (Annexure P-1).

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

‘Statement of Shinderpal Singh s/o Gurbachan Singh r/o Khundar Gatti, PS Sadar Ferozepur, aged about 22 years, Mob. No.98154-68397, stated that I am resident of above mentioned address and doing the work of agriculture. On dated 04.05.2020, me and son of my Mama namely Sucha Singh s/o Puran Singh, both making wheat chaff at our fields and time would be 7 pm, the



son of my Mama namely Sucha Singh went to village by taking trolley of wheat chaff and I was alone in the fields. The time would be 9 pm, I was doing the work in my fields then Gulzar Singh s/o Lachman Singh armed with Dang, Balkar Singh s/o Lachman Singh armed with Gandasi, Gurwinder Singh s/o Gulzar Singh armed with iron rod, Lakhwinder Singh s/o Gulzar Singh armed with iron rod, Gurpreet Singh s/o Balkar Singh armed with Hockey all residents of Khundar Gatii and Major Singh s/o Darshan Singh empty handed r/o Kamale Wala came there and encircled me and they told me that your maternal Grand Father Gurbachan Singh got registered a false case against us. In the meanwhile, Gulzar Singh raised lalkara that let catch him and teach him lesson for registering a false case. Then Balkar Singh gave reverse blow of gandasi which hit on the upper side of left eye, in the meantime, above said Gurwinder Singh gave rod blow which hit on my chest near left shoulder, in the meantime, Lakhwinder Singh gave me iron rod blow which hit on the left side of my chest and immediately, Gurpreet Singh above gave me Hockey blow which hit on my left shoulder and I fell down. They tied my hands and legs and took me to the fields of Major Singh s/o Darshan Singh r/o Kamale Wala. They threw me on the ground and Lakhwinder Singh ran over blue colour INDO Farm Tractor on my neck and I became unconscious. After long time, I became conscious. In the meantime, the son of my maternal Uncle namely Sucha Singh came there who took me to the house and then he got arranged vehicle and admitted me to the Civil Hospital, Ferozepur where I am under treatment. Statement got recorded, heard and correct. LTI-Shinderpal Singh, statement verified Sd/- Sucha Singh s/o Puran Singh r/o Khundar Gatti, verified Sd/- Karnail Singh ASI.'

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 and has referred



to the part of the investigation done by Deputy Superintendent of Police concerned in which it has been recorded that :-

'The complainant Chinderpal Singh has stated that the accused party has ran the tractor on his neck, which is also not acceptable because if Chinderpal Singh's neck had been weighed down by a heavy object like a tractor there was a possibility of severe damage to his neck/spinal cord and external injuries on the neck may also be there but it is not. The Board of Doctors also mentioned in their opinion regarding the injury to the neck of the deceased, that "We are of the opinion that there is nothing to suggest that injury on neck can be sustained as a result of neck being overrun by a Tractor as alleged". But it cannot ruled out the possibility of neck injury of complainant Chhinderpal Singh due to some weapons or due to fall somewhere during the scuffle which is the subject of investigation. From the above facts, it is confirmed that this case has been exaggerated by complainant Chinderpal Singh, in which all the persons of second party mentioned by the complainant were not involved. Among the persons mentioned by the complainant Chinderpal Singh, Balkar Singh son of Lachman Singh, Gurwinder Singh son of Gulzar Singh, Lakhwinder Singh son of Gulzar Singh residents of Khunder Gatti has not been found to be present at the time of the incident, they found present in their house at the time of the alleged incident which was also verified by the witness Amarjit Singh son of Kashmir Singh resident of Khunder Gatti that on 04.05.2020 at around 09 o'clock in the night, he was returning from his fields and stopped near Balkar Singh where Balkar Singh's nephew Gurwinder Singh and Lakhwinder Singh sons of Gulzar Singh came from their home, who told them about the dispute with Chinderpal Singh in the fields of Guljar Singh. In this way, Balkar Singh, Gurwinder Singh and Lakhwinder Singh found present in their homes at the time of alleged incident. An attempt were also made to get technical assistance for verification of this fact but it has not been helpful due to small distance between the village and the place of incident. On the other hand Sucha Singh son of Puran Singh resident of Khunder Gutti, who is brother of the complainant (now deceased) Chinderpal Singh, used to present



at the summons of this office, who repeatedly took time to present his side/evidence but till date he has not presented any evidence regarding the subject. Despite taking time in writing, he has not presented any evidence, regarding which the statement of Sucha Singh is attached herewith for perusal. From which it is clear that the complainant party is not having any sufficient evidence in their favour. In this way, it is verified that due to the old grudge, the complainant Chinderpal Singh has exaggerated against Gulzar Singh for pressurizing them. The sons of applicant Guddo Bai namely Gurwinder Singh, Lakhwinder Singh sons of Gulzar Singh residents of Khunder Gatti were not found present at the spot who was found present in their house at the time of alleged incident. It is verified from the statements of the witnesses recorded during the investigation and from the evidence on the file. Whereas Major Singh son of Darshan Singh resident of Kamalewala and Gurpreet Singh son of Balkar Singh resident of Khunder Gatti were found present at the time of incident whose role needs to be considered more deeply and Balkar Singh Singh son of Lachhman Singh has to be considered also for some kind of conspiracy and the SHO, PS Sadar Ferozepur has been instructed separately for the same. From my investigation so far Gurwinder Singh and Lakhwinder Singh sons of Guljar Singh residents of Khunder Gutti, PS Sadar Ferozepur were found in the case.'

He points out that co-accused Gulzar Singh and Major Singh have been granted concession of anticipatory bail and regular bail vide orders dated 20.12.2021 and 03.03.2022 passed in CRM-M-14923-2021 and CRM-M-14267-2021 respectively. He further points out that antecedents of the petitioner are clean, 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 year, 5 months and 3 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the DSP concerned has declared the petitioner innocent without waiting for postmortem report according to which the cause of death is complication of injury No.5 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 year, 5 months and 3 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, 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 20.05.2023 charges stands framed on 23.02.2024 out of 24 prosecution witnesses, only one PW 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.

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

27.01.2025
anuradha

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