

2025:PHHC:001191

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

234

CRM-M-64118-2024

DATE OF DECISION: 08.01.2025

HARCHARAN SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Jitender Singh Dadwal, Advocate
for the petitioner.

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

Mr. Abhijeet Partap Singh Chaudhary, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of the BNSS, 2023 (read with Section 439 Cr.P.C.), for grant of regular bail to the petitioner in case FIR No.62 dated 22.08.2024 (Annexure P-1), under Sections 419, 420, 467, 468, 471 and 120-B of the IPC, 1860, registered at Police Station Ladhuwal, District Police Commissionerate Ludhiana.

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

‘At this time it is recorded that an application PGD No. 407804 dated 09.08.2024 by Ajit Singh son of Gurbachan Singh resident of village Nurpur Bet, Ludhiana, was received at Police Station through post for registration after the case investigation was done. Which is as under: To The Commissioner of Police Ludhiana Sub: Complaint against 1. Mohinder Singh son of Kamail Singh son of Swaran Singh,

resident of Gali no. 2, Ichhewala road Veer Nagar Ferozepur City, (Adhar card 4395 2093 2401) 2. Subahsh Chand son of Shri Amar Nath, House no. 35, Club road, Civil lines, Near Durga Mata Mandir, Ludhiana, 3. Bunty-16- Kumar Numberdar, vilageSunet, Ludhiana 4. Gurcharan Singh, Advocate, Distt. Courts, dhiana. For registration of case under section 318(4), 319(2), 335,336(1),336(2), 336 (3), 61(2), of B.NS 2023 for committing a forgery of power of attorney bearing wasika no 2024-25/101/4/36 dated 5.04.2024 by impersonation and by forging the signature of the applicant Sir, The applicant submits as under: 1. That the applicant Mohinder Singh alias Mohinder Singh Sohal son of Karnail Singh, at present resident of PO box 6995 Portland, OR 97228-6995 USA, is settled in America for the last more than 30 years, and holds an American passport. 2. That the applicant has executed special power of attorney in favour of his confident ShriAjit Singh Khaira son of Shri Gurcharan Singh, resident of Village Nurpur Bet, Tehsil and District Ludhiana is competent complaint to file and pursue the present complaint. 3. That the applicant is owner to the extent of 1/2 share in the land measuring 174K-7M out of Khata no. 47/57min, 49/59min, 50-60-48/58 min, Khasra no.24//1/1, 25/14, 25/5/1, 25/6/1, 25//7/1, 25//20/1, 26/15, 26/6, 26//15, 25//1, 25//10, 25/11/1, 25//12/2,26//3/2,26//8, 26//13, 26//17, 26//18, 26//25, 25//2/1,25//8/1, 25//9/2, 25//13, 25//19, 26/14, 26/17, 26//14, 26//16, 24//1/2, 25//3/2, 25/5/2, 25//6/2, 25//7/2, as per jamabandi for the year 2019-20 situated in Village Chahar, Hadbast no. 121, Tehsil West, District Ludhiana. The aforesaid agricultural land falls on southern Bye Pass, Ludhiana and its market value is more than Rs. 3 crores per acre. 4. That the applicant has come to know that the accused Mohinder Singh, Subhash Chand, Bunty Kumar Namberdar and Gurcharan Singh Advocate, in connivance with each other with malafide intention to grab the valuable property of the applicant, have forged and fabricated one General power of attorney bearing wasika no.2024-25/101/4/36 dated 5.04.2024 in which the accused Mohinder Singh son of Karnail Singh son of Swaran Singh, resident of Gali no.2 Icchewal Road, Veer Nagar, Ferozepur City, impersonated as applicant (Mohinder Singh Sohal) and power of attorney bearing wasika no.2024-25/101/4/36 dated 5.04.2024 has been executed in

favour of accused Subhash Chand, for the land measuring 5 Acre-6-1/2 Kanals situated in Village Chahar, District Ludhiana. 5. That the applicant did not visited India on 5.04.2024 as such there is no question of the applicant, executing power of attorney in favour of accused Subhash Chand, and the executants shown and identified in the power of attorney is an impersonator who has forged the signatures of the applicant. 6. That the genuine and standard signatures of the applicant do not match with the signatures by a forger and impersonator on the fraudulent power of attorney dated 504.2024.7. That the applicant do not hold any Adhar Card number 4395 2093 2401 which has been mentioned in the forged power of attorney.8. That the forged and fabricated power of attorney pertains to land measuring 5 Acre-6-1/2 Kanals out of Khata no. 47/57min, 19/59min, 50-60-48/58 min, Khasra no. 24//1/1, 25/14, 25//5/1, 25//6/1, 25//7/1. 25//20/1, 26/5, 26//6, 26//15, 25/11, 25//10, 25//11/1, 25//12/2, 26//3/2, 26/8, 26//13, 26//17, 26//18, 26//25, 25//2/1, 25/8/1, 25/9/2, 25//13, 25//19, 26/14, 26//7, 24/114, 26/16, 24//1/2, 25//3/2, 25//5/2, 25//6/2, 25//7/2, as per jamabandi for the year 2019-20 situated in Village Chahar, Hadbast no. 121, Tehsil West, District Ludhiana, is owned and possessed by the applicant.9. That the applicant has never purchased the stamp paper on which the forged and fabricated power of attorney has been executed, not ever appeared before the Sub Registrar West, Ludhiana, for its registration. 10. That the photograph on the power of attorney is not of the applicant and accused Mohinder Singh has appeared before the office of Sub Registrar, (West) Ludhiana and impersonated as the applicant Mohinder Singh Sohal. 11. That there is every likelihood that the alleged impersonator Mohinder Singh has given his wrong address and in connivance with the accused Subhash Chand intends to alienate the property. 12. That no consideration has ever been passed on to the applicant nor the accused Mohinder Singh and Subhash Chand son of Shri Amar Nath and marginal witness Bunty Kumar of Village Sunet, and Gurcharan Singh Advocate, District Courts, Ludhiana, are known to the applicant nor the applicant has ever met them. 13. That a case under section 318 (4), 319 (2), 335, 336 (1), 336 (2), 336 (3), 61 (2), of B.N.S. 2023 is made out against the above said

accused. Your goodself is therefore, requested to kindly look into the matter personally and ensure that a case under the relevant provisions of law is registered against the aforesaid accused persons and they be arrested, tried and punished according to the provisions of law, and if any other persons is also found involved, suitable action be also taken, against them. Sd/- Ajit Singh, Applicant Mohinder Singh son of Karnail Singh, at present resident of PO Box 6995 Portland, OR 97228-6995 USA, through attorney Shri Ajit Singh son of Gurcharan Singh, Village Nurpur bet, District Ludhiana. Ph.98140-88101 Dated: 8.08.2024.'

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, as no act of impersonation and forgery has been attributed to him. It is further argued that the petitioner was not even the marginal witness to the allegedly forged General Power of Attorney dated 05.04.2024 and there is no occasion for him to impersonate the complainant who is resident of Portland, USA and is settled in America and is holding a American Passport and executed a SPA in favour of one Ajit Singh Kehra to pursue the present complaint. Moreover, the antecedents of the petitioner are clean, therefore, prays for grant of regular bail to him.

The assertion is that the case of the petitioner is on better footing than that of his co-accused namely Varun Jain, who has already been granted the concession of regular bail by this Court vide order dated 07.01.2025 passed by this Court in CRM-M-60561-2024, as in the present case the petitioner has not received any money.

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 3 months and 9 days.

Learned State Counsel on instructions submits that investigation is complete and is not in a position to controvert the fact that the case of the petitioner is on better footing than that of his co-accused namely Varun Jain, who is already enlarged on regular bail by this Court.

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. 3 months and 9 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender added with the fact that the accusation of the impersonation by the petitioner as complainant is of the nature for which the custody of the petitioner is not required until and unless his role is proved, therefore, it would be futile exercise to keep the petitioner behind the bars for indefinite period. Moreover, the case of the petitioner is on better footing than that of his co-accused namely Varun Jain, as the petitioner has not received any money. Further, 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 20.12.2024 charges are yet to be framed, out of 19 prosecution witnesses, none 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

08.01.2025

sham

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