



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

245

CRM-M-64273-2024 (O&M)
DATE OF DECISION: 09.01.2025

VARINDER SINGH @ GHULLA

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioner.
Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-50449-2024

Application is allowed, as prayed for.

Exemption from filing certified copies of Annexures P-1
& P-2 is granted.

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, for grant of regular bail to the petitioner in FIR No.43, dated 28.05.2024, under Sections 323, 324, 326, 452, 506, 148, 149, 201 of IPC/ Section 115(2), 118(1), 118(2), 333, 351(2) and (3)/191(3)/190/238 of BNS, 2023 registered at Police Station City Batala, District Gurdaspur.

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

'It is stated that statement of Amar Khosla s/o Tilak Raj

r/o of Kapoori Gate, Batala District Gurdaspur aged 23 years

Mobile No. 98146-30385, 7837597441. It is stated that I am resident of above mentioned address and serving in Corporation Batala as Driver on contract basis. On 27.05.2024 / alongwith my father Tilak Raj and mother Meera was present in my house at 11.00 p.m. on the outer door of my house. Some unknown person called out my name and called me outside. I open the outer door of my house and outside in the Street Babita @ Babbi wife of Vijay Kumar r/o Kapoori Gate Batala, her son Abikash @ Mithu son of Vijay Kumar and Shiv @ Vicky s/o Vijay Kumar r/o Kapoor Gate Batala armed with datar and Ali son of Raju r/o Gwal Mandi, Amritsar armed with datar, Danish @ Kannu s/o Vijay Kumar r/o Mia Mohalla Batala armed with datar and Khula s/o not known r/o Andhria Mohalla Batala armed with sota and two unknown persons were seeing standing and Babita @ Babbi gave lalkara and said all the persons to catch hold of him. He is Khosla who had fought with us last year and got my son injured and teach him a lesson for that. I tried to close my door but the aforementioned all persons alongwith their weapons forcible entered our house and Avikash @ Shivu attacked me with datar which hit me on the left side from the center of my head. And Shiv @ Vicky s/o Vijay Kumar attacked me with his datar which hit me in the middle of head on the right side, Ali s/o Raju r/o Gwal Mandi District Amritsar attacked me with datar which hit me on my forehead. Then Danish @ Kannu s/o Vijay r/o Mia Mohalla Batala attacked me with his datar which hit me on the left side of my head above the ear. Ghulla r/o Attari Mohalla Batala attacked me with datar which hit me on the head above the neck and unknown persons attacked me with datar which hit me near the right ear. And Babita @ Babbi attacked me with Sota which hit me on my shoulder. Avikash @ Shibu attacked me with datar which hit me on the right side of my biased. Shiv @ Vicky attacked me with datar which hit me on the right thing. Danish @ Kannu attacked me with the reverse side of datar which hit me on right knee. I shouted 'Mar Ditta

Mar Ditta'. My mother Meera tried to save me by coming in front then Avikash @ Shibu attacked my mother with the reverse side of datar and also pushed her. As a result the finger of right hand got injured. My father Tilak Raj is paralytic from one side and he was shouting from inside to the Assailants that why are you hitting my son. My mother pleaded before the Assailants and got me saved from them. The Assailants ran away from the spot alongwith weapons while hurling abuses. After listening to hue and cry Rahul s/o Karam Pal r/o Kapoori Gate Batala took me to Civil Hospital Batala for arranging vehicle and got me first aid and also got the MLR conducted. But because the injuries were serious / was referred Guru Nanak Hospital, Amritsar. Where I am under treatment. The reasons of discord was that last year 2023 / had fight with Avikash and Shiv Kumar @ Vicky and they had got injured and with the intention of revenge the aforesaid persons have forcible entered my house on 27.05.2024 at 11.00 p.m at night and had inflicted serious injuries on me. I certify the same and action may kindly be taken The statement has been read and heard is stated to be correct. Sd/- Amar Khosla certified by Sunny Khosla s/o Tilak Raj r/o Kapoori Gate Batala. Mob.no. 8054801991. Certified by Iqbal Singh AS/ P.S. City Batala dated 28.05.2024."

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. He submits that the complainant party had dispute with Shiv and Avikash and FIR No. 186/2023 was registered against the complainant party and to put pressure upon the complainant party in above said FIR, the present FIR was registered. He further submits that the petitioner has not caused any injury to the complainant. He has placed reliance upon an order dated 19.11.2024 passed in CRM-M-49527-2024 vide which co-accused

Danish @ Kalu has already been granted the concession of regular bail and claims parity.

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. He does not controvert the fact that similar footing co-accused has already been granted the concession of regular bail.

4. Analysis

Be that as it may, considering the fact that the petitioner has already suffered incarceration of 5 months and 5 days and not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents and co-accused has already been granted the concession of regular bail by this Court added with the fact that investigation is complete, challan stands presented on 19.09.2024 and thereafter charges are yet to be framed and total 9 prosecution witnesses are cited for examination, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131*. 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 basic and 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 discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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

09.01.2025
Sham

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