



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

CRM-M-65183-2024

DATE OF DECISION: 13.01.2025

SUKHWINDER SINGH @ SONA SINGH @ SONA
...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vipul Aggarwal, 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 petitioners in Case FIR No. 159, dated 07.09.2024, under Sections 103, 61(2) of BNS, 2023, registered at Police Station Sadar Fazilka, District Fazilka.

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

“Statement of Malkit Singh son of Balwant Singh son of Labh Singh resident of Muhar Sona aged about 38 years mobile number 75894-55947 had stated that I am a resident of the abovesaid address and we are three brothers. The eldest is Malkit Singh, younger to him is deceased Gurdeep Singh and younger to him is Surjit Singh. My mother Indro Bai had died about 18 years ago. My father Balwant Singh had died about 2 years ago. We all three brothers had made separate-separate houses and all three are living separately. Are doing the work of labour. My younger brother Gurdeep Singh whose



age is about 35 years. He was married about 17 years ago with Shimla Rani daughter Mangal Singh resident of Rawa Wali 2 near Mandi Karanpur Rajasthan. Who is having three children. The eldest girl Kajal is about 15 years old younger to her the boy Karan is about 14 years old and the youngest girl is Komal who is 12 years old, who study in different-different classes. For some time Sukhwinder Singh alias Sona Singh son of Kulwant Singh son of Surjan Singh of our village who is a neighbour of my brother Gurdeep Singh's house and at times when my brother Gurdeep Singh was not at home Sukhwinder Singh alias Sona Singh used to visit my brother Gurdeep Singh's house. Since my house is near, I had seen him several times and tried to make Sukhwinder Singh alias Sona Singh understand. Then Sukhwinder Singh alias Sona Singh and my sister-in-law Shimla Rani had felt bad about it. I did not tell this to my brother for fear of disgrace in the village. And Sukhwinder Singh alias Sona Singh had made my brother a friend in order to come to my brother's house. And used to consume alcohol with him several times. On dated 04-09-2024 time at about 9-30 of night I was standing near my house and in our street the light was on. Sukhwinder Singh alias Sona Singh was driving his motorcycle and my brother Gurdeep Singh was sitting behind on the motorcycle. Who went from our village toward the side of Bhawani, Muhar Khiva. I went to my house and slept. On dated 05-09-2024 my sister-in-law Shimla Rani told my wife Veero Bai that his husband Gurdeep Singh had left home at night and had not returned. Upon which my wife told me. I alongwith other respectable persons and relatives searched for him, then time at about 6 of the evening, in the area of village Mozam in the paddy field, the dead body of Gurdeep Singh was found near the road in the paddy field. Then we brought home the dead body of Gurdeep Singh and in the presence of relatives and with the help of people of the village cremated my brother Gurdeep Singh on 06-9-2024 at 10 in the morning at the cremation ground of the village. Today for my household work I was going to the shop then Falak Singh son of Kala Singh and Sukhdev Singh son of Subhash Singh residents of village Muhar Sona told me that on dated 04-09-2024 time at about 10-30 they both were returning from their work from the city



Fazilka to their house Muhar Sona then on the way near village Bhawani, Sukhwinder Singh alias Sona Singh was standing near his motorcycle and Gurdeep Singh was lying on the patri of the road. We asked Sukhwinder Singh alias Sona Singh that whether he had told at Gurdeep Singh's house. Then Sukhwinder Singh alias Sona Singh told that he had phoned at Gurdeep Singh's house, they are coming. From there we went to our house. On the next day as usual we went to our work. Today we had come to know that Gurdeep Singh had been cremated and no action had been taken by them. That Sukhwinder Singh alias Sona Singh had committed murder of my brother Gurdeep Singh. I had inquired at my own level. Sukhwinder Singh @ Sona oftenly used to come and visit my sister-in-law Shimla Rani. Because of this, my sister-in-law Shimla Rani and Sona Singh considered Gurdeep Singh as an obstacle. Both with a bad intention, Sukhwinder Singh alias Sona Singh on dated 04-09-2024 at about 10-30 of the night had murdered my brother Gurdeep Singh. Today I and my uncle Kala Singh were coming to the police station to record our statement that you met us. Statement had been recorded. I am the applicant. Action be taken. Signature in Punjabi of Malkit Singh aforesaid, corroboration of statement by Kala Singh son of Labh Singh resident of Muhar Sona, verified INSP/SHO Navdeep Singh Police Station Sadar Fazilka dated 07-09-2024. Police proceedings- Today I the Insp/Sho alongwith HC Kaur Singh No.71/Fazilka, SC Manjit Singh No.483/Fazi, CT Neeraj Kumar 617/Fazi, LC Manjeet Kaur No. 1150/Fazilka, PHG Balveer Singh No. 17100 were going in connection with patrolling, when I Insp/SHO reached at the main gate then Malkit Singh, Kala Singh came present upon which Malkit Singh got recorded his aforesaid statement before me the INSP/SHO. The statement was reduced into writing thread bare and was read over, who after accepting it to be correct put his signature in Punjabi beneath his statement and Kala Singh as a spot witness corroborated the statement. From the statement offence of 103, 61 (2) BNS is made out. That from the statement of the complainant for the registration it is sent to the police station through SC Manjit Singh No.483/Fazilka. After the registration of FIR its number be intimated. Special



reports be issued. I the INSP/SHO alongwith fellow employees and companion are going at the spot. SD Navdeep Singh INSP/SHO police station Sadar Fazilka dated 07-09-2024. Within the area of Main Gate Police Station Sadar Fazilka AT 9-50 PM. Today at police station- Upon receiving the aforesaid statement at the police station and after the registration of aforesaid FIR under the said offences against the aforesaid accused, the copy of FIR alongwith original statements is sent to the concerned Insp/SHO through SC. After issuance of special reports it are being sent to the Ilaqa Magistrate and to the higher officials through Constable Bhupinder Singh No.425/ Fazilka. PCR Fazilka is being informed through E-mail."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioners has argued that the petitioner has been falsely implicated in the present case merely on the basis of suspicion that he is having illicit relations with Shimla Rani. But there is nothing on record to show this fact and he has been roped in the present case on the basis of last seen theory. Moreover, there is no medical evidence on the record to prove that the deceased Gurdeep Singh was murdered, as no post-mortem/medical examination was got conducted.

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 has prayed for dismissal of the present petition stating that serious allegations have been levelled against the petitioner. He informs the Court that in the present FIR



challan stands presented on 05.12.2024, wherein, the prosecution has cited total 19 witnesses and charges have not yet been framed.

4. Analysis

Be that as it may, considering the fact that there is no medical evidence on record, to show that the deceased Gurdeep Singh was murdered therefore the cause of death cannot be ascertained in the absence of post-mortem report, which creates the dent in the prosecution story added with the fact that challan stands presented on 05.12.2024 wherein, the prosecution has cited total 19 witnesses and charges have not yet been framed, meaning thereby, the conclusion of trial shall take considerable time 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 petitioners 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 Nimesh 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

13.01.2025
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>