



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

234 CRM-M-64900-2024
DATE OF DECISION: 16.01.2025

GURDEEP SINGH ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. GVS Behl, Advocate for the petitioner(s).

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

Mr. T.S. Grewal, Advocate for the respondent.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS for grant of regular bail in case FIR No.42 dated 25.06.2024 registered under Sections 307, 379-B, 506, 148, 149, 120-B IPC (Sections 323, 324, 325, 326 and 201 IPC added later on) at Police Station Sadar Ahmedgarh, District Malerkotla.

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

‘Statement of Kulwant Singh, son of Darbara Singh, resident of Borhai Kalan, Police Station Sadar Ahmedgarh, aged about 42 years, Mobile No.98722-92554. Stated that I am residing on the aforementioned address and doing agricultural work. On 23.06.2024, at about 4:30/5:00 PM, I was going to home on my motorcycle after ploughing my field at Village Borhai Kalan, then I saw that four unknown persons having age between 20 to 25 years were standing on my field along with two motorcycles out of which three hair-shorn persons were having iron rods and another was



Sikh with long beard, who was having Kirch (sword). I can identify them if they be produced before me. On seeing me, they alighted from their motorcycle and all of them caught hold of me; pull me down from the motorcycle and snatched my mobile phone having SIM No.98722- ht 92554. Then three of the assailants started hitting iron rod on my head, left leg and left leg with an intention to kill me due to which my right leg got fractured and left leg became wounded. I raised alarm but all of them gave me threats to Kirch kill me and unknown Sikh person hit his sword (Kirch) thrice on my right shoulder, elbow joint of right arm and right hip with an intention to kill me due to which I became unconscious. While leaving the spot, one of the hair-shorn persons hit iron rod on my head but I raised my hand in order to save myself due to which the rod hit on the fingers of my right hand. One of them hit iron rod on my back and another continuously hit on my left leg and right cheek. Then all the assailants left the spot along with their respective weapons on their motorcycles where after I gained consciousness and started screaming upon which my companion Jagdev Singh son of Major Singh resident of Mahauli Khurd came there, who was working near my fields. I told him to arrange a car and he came back after few minutes along with Gurjeet Singh resident of Borhai Kalan on his car, who took me to Civil Hospital, Malerkotla for medical treatment but they referred me to Rajindra Hospital, Patiala where after I got referred to PGI, Chandigarh but I got admitted in DMC Ludhiana where I am undergoing treatment. Iqbal Singh, son of my uncle (Taya)- Harchand Singh, resident of Borhai Kalan in collusion with other four unknown persons attacked me because this year I myself started ploughing my land and I get large portion of water from the motor. Previously, I gave my land on lease. Apart from this, some dispute arose between me and Iqbal Singh on account of which he in collusion with his four unknown companions assaulted me. Strict legal action be taken against them. Print out of the statement of injured Kulwant Singh was taken the contents whereof were read over to him and after admitting it to be correct, he signed the same



in Punjabi language which was attested by ASI Gurmeet Singh No.2437/SNG.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the petitioner was neither named in the present FIR nor any incriminating material is coming forth to connect the petitioner with the alleged crime. He further submits that there is unexplained delay of 2 days in lodging the present FIR. He contends that neither any weapon has been recovered from the petitioner nor any injury has been attributed to him. He further submits that the petitioner is not involved in any other case, meaning thereby he is not a habitual offender.

On behalf of the State and complainant

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 6 months and 10 days.

Learned State Counsel on instructions from the Investigating Officer and counsel for the complainant opposes the prayer for grant of regular bail stating that the petitioner along with other co-accused armed with kirpan have assaulted the complainant with an intention to kill and forcibly snatch many articles from them and on the asking of co-accused-Iqbal gave injury to the complainant, therefore, prays for dismissal of the petition.

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. 6 months and 10 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, the only allegation qua him is that he was carrying kirpan but no injury has been attributed to him, 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 24.09.2024 charges are yet to be framed, out of 17 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

16.01.2025
anuradha

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