

2026:PHHC:044916



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M No.2996 of 2025

Mohammad Rafi @ Mohammad Rafiq ... Petitioner

Versus

State of Punjab ... Respondent

|    |                                                                                                      |                |
|----|------------------------------------------------------------------------------------------------------|----------------|
| 1. | The date when the judgment is reserved                                                               | 19.03.2026     |
| 2. | The date when the judgment is pronounced                                                             | 23.03.2026     |
| 3. | The date when the judgment is uploaded on the website                                                | 23.03.2026     |
| 4. | Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced | Full           |
| 5. | The delay, if any, of the pronouncement of full judgment, and reasons thereof                        | Not applicable |

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Akashdeep Singh, Advocate,  
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,  
for the respondent-State.

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MANISHA BATRA, J.

1. The instant one is the second petition as filed by the petitioner seeking regular bail in case arising out of FIR No.81 dated

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22.04.2022 registered under Sections 302, 307, 324, 325, 323, 148, 149 and 120-B of IPC at Police Station Tanda, District Hoshiarpur. The previous petition as filed by him, had been dismissed as withdrawn.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant Karamdin alleging that on 21.04.2022, to perform religious ceremony on account of death of father of the co-villager Sheru who is member of the same Gujjar community as of the complainant, some members of his community including himself had gathered. Accused Gulam Nabi who is his cousin brother with whom they had some dispute from the last about two years, had also come to attend that ceremony along with the petitioner and some other persons. At about 8 PM, when the ceremony had completed, accused Sheru made an exhortation thereby proclaiming and instigating his other accomplices to catch hold of the complainant and to teach him a lesson. On hearing so, the petitioner accompanied by the co-accused opened a murderous assault upon him by striking blows with sticks and rods. The petitioner struck a blow with a brick thereby causing injury on the head of his son Talib Hussain. Due to the impact of the injury, his son had immediately died. His other son Murtza Ali, Abdul Ali and grandson Reham Ali had also sustained injuries. On clamour being raised, the assailants had fled away.

3. After registration of FIR, investigation proceedings were initiated. Postmortem examination of dead body of the victim Talib Hussain

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was conducted. The petitioner was arrested on 27.04.2022. Other accused were subsequently arrested. Investigation now stands completed.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. Infact, after performance of the ceremony, the petitioner was serving meals to the persons present there including the family members of the complainant when Guggi Bano, wife of the complainant had thrown a footwear on the face of the petitioner and Murtaza Ali had also assaulted him. Due to intervention of the relatives, they were pacified but Abdulla Ali, a member of the group of the complainant had taken an axe and proclaimed that he would kill the petitioner. The family of the complainant had then left wheres the petitioner remained in the house of Barkat Ali. The members of the group of the complainant came to the house of Barkat Ali at about 9 PM and had opened an assault upon him thereby causing injuries to his companion Gulam Rasool, Gulam Navi and himself. Both of his arms were injured. There was no question of his throwing any brick towards the victim or any other person. He had sustained grievous injuries on his right arm and thumb of his left hand. A cross case has been registered. It is a case of version and cross version. He was not the aggressor. The trial is likely to take considerable time to conclude as only 02 witnesses have been examined so far. No useful purpose would be served by his further incarceration. It is, thus, argued that the petition deserves to be allowed and he deserves to be released on bail.

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has argued that by forming an unlawful assembly with the co-accused, the petitioner had assaulted the son of the complainant and other members of his family including the complainant and had caused injuries to them. The brick thrown by the petitioner on the head of son of the complainant had resulted into his homicidal death. There are chances of petitioner's absconding, intimidating the witnesses or committing similar offences, if extended benefit of bail. This is a successive petition and there is no drastic change in the circumstances. It is, therefore, stressed that the petition does not deserve to be allowed.

6. This Court has considered the rival submissions.

7. The petitioner by forming membership of an unlawful assembly with the co-accused is alleged to have assaulted the members of the complainant party. The brick thrown by him on the son of the complainant is stated to have caused his homicidal death due to head injury sustained by him. It is a case of version and cross version. The petitioner has been linked to the acts attributed with the aid of Section 149 of IPC. Though the allegations prima facie show his participation in the occurrence while having knowledge that the subject offences were likely to be committed in prosecution of common object and stands accused of a heinous crime, however, now he has remained in custody for a period of more than 03 years and 10 months. The chances of conclusion of trial in near future are bleak as only 02 out of 21 prosecution witnesses have been examined so far. This factor, in the opinion of this Court, is a ground to move for bail afresh. The

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Hon'ble Apex Court has observed in a catena of cases that an accused cannot be kept in custody for an indefinite period of time, and the bail application can be considered on its own merits even if it is filed repeatedly. It has also been held that every day spent in custody can provide a new cause of action for filing a bail application under certain circumstances. This principle is a part of the broader approach emphasizing that law prefers bail over jail, aiming to balance the rights of the accused with the requirements of the criminal justice system. Prolonged detention itself is a ground for reconsideration of bail since the settled principle of law is that detention prior to trial should not become punitive. It is well settled proposition of law that prolonged incarceration generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such cases, when there is delay in conclusion of trial without there being any fault on the part of the accused, he becomes entitled to be released on bail. Since the trial of this case, apparently and evidently is shown to have been delayed, as such, this Court is of the considered opinion that no fruitful purpose would be served by keeping the petitioner in custody any more. Accordingly, the petition is allowed and the petitioner is ordered to be admitted to bail subject to his furnishing personal as well as surety bonds to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found involved in any other subsequent case and if it appears that it is on account of any act and conduct of the petitioner that

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further delay is being caused in the conclusion of the trial and further subject to his abiding by the following conditions:-

- (i) The petitioner will not tamper with evidence during trial.
- (ii) he will appear before the trial Court on each and every date fixed, unless is exempted by specific order of the Court.
- (iii) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

8. In the eventuality of breach of any of the aforementioned conditions, the respondent-State shall be at liberty to move an application seeking cancellation of the bail.

9. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

23.03.2026  
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(MANISHA BATRA)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |