

CRM-M-66484-2025

2026:PHHC:004386



237
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CRM-M-66484-2025

Toshif @ Toshi
.....Petitioner
versus
State of Haryana
.....Respondent

Date of decision: January 15, 2026
Date of Uploading: January 15, 2026

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Farukh Abdullah, Advocate for the petitioner.

Mr. Gurmeet Singh, AAG Haryana.

Mr. Sanyam Khetarpal, Advocate and
Ms. Kajal Chauhan, Advocate for the complainant.

SUMEET GOEL, J. (ORAL)

Present second petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) read with Section 528 of the BNSS, for grant of regular bail to the petitioner in case bearing FIR No.471 dated 04.12.2024, registered for the offences punishable under Sections 191(3), 190, 126(2), 140(3) & 109(1) of the BNS, 2023 and Sections 25/ 54/ 59 of the Arms Act, 1959 (for short ‘Arms Act’), registered at Police Station Sadar Nuh, District Nuh.

2. The gravamen of the allegations against the petitioner is that on 03.12.2024, at about 8:25 PM, the police received telephonic information regarding the kidnapping/abduction of a person from Village Bajadka. Upon the police team reaching Village Bajadka, further information was received

CRM-M-66484-2025

telephonically from SHKM, Nalhar, regarding the admission of an injured person with a gunshot wound.

Subsequently, on 04.12.2024, at about 2:00 AM, a complaint was lodged with the police by the complainant, namely, Waseem Akram against four named accused persons (including the *petitioner herein*) and 3–4 unknown persons. In the complaint, it was alleged that on 03.12.2024 at about 8:00 PM, the complainant and his brother, namely, Anees were returning to their house on motorcycles from a gym. When they reached near Bajadka Turn on Palwal Road, the accused Nepali and Ramjan, who were already present at the spot, allegedly rammed a black Scorpio vehicle into the motorcycle of Anees and forcibly abducted him in the said vehicle towards Nuh. The complainant immediately informed his elder brother telephonically, who in turn informed the police by dialing 112. Subsequently, it came to the knowledge of the complainant that the accused persons shot his brother and thereafter threw him on the road.

3. Learned counsel for the petitioner has iterated that the petitioner is in custody since 28.12.2024. Learned counsel has further iterated that the petitioner has been falsely implicated into the FIR in question. Learned counsel has iterated that assuming *arguendo*, the prosecution version is taken to be correct, the fire shot upon the injured-Anees is not attributed to the petitioner, but to the co-accused, namely, Warish, who is in custody. Learned counsel has further argued that prime prosecution witnesses are repeatedly not turning up to have their testimony recorded and bailable/ non-bailable warrants have been issued against them, which factum is clearly decipherable from the *zimni* orders dated 02.09.2025, 04.10.2025 & 29.11.2025 passed by the learned trial Court. Learned counsel has urged that the petitioner has suffered incarceration for more than 01 year. Thus, regular bail is prayed for.

CRM-M-66484-2025

4. Learned State counsel has opposed the present petition by arguing that there are direct/ serious allegations against the petitioner and, thus, the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record the custody certificate dated 13.01.2026, in the Court today, which is taken on record.

4.1. Learned counsel for the complainant has filed reply dated 14.01.2026 in the Court today, which is taken on record. Raising submissions in tandem with the said reply, learned counsel for the complainant has vehemently opposed the grant of regular bail to the petitioner that there are direct/ serious allegations against the petitioner. Learned counsel has further argued that in case the petitioner is released on regular bail, there is all the likelihood of the petitioner absconding the process of justice and also interfering with the prosecution evidence. With these submissions, dismissal of present plea is entreated for.

5. I have heard counsel for the rival parties and have gone through the available records of the case.

6. The petitioner was arrested on 28.12.2024, whereinafter, the investigation was carried out and the challan has been presented on 01.03.2025. Total 16 prosecution witnesses have been cited, out of which, only 02 have been examined till date. The rival contentions raised at Bar give rise to debatable issues, which shall be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, *lest* it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

6.1. There is no gainsaying that out of total 16 cited prosecution witnesses, only 02 have been examined till date. A perusal of the *zimni* orders

CRM-M-66484-2025

passed by the learned trial Court, brought forth before this Court by the petitioner, reflects that the trial is procrastinating and folly thereof is not attributable to the petitioner.

6.2. At this juncture, it would be apposite to refer herein a judgment of the Hon'ble Supreme Court in *Javed Gulam Nabi Shaikh vs. State of Maharashtra and anothers, 2024(3) RCR (Criminal) 494*, which reads thus:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

6.3. Indubitably, the present petition is the second attempt by the petitioner to secure regular bail. The last bail plea was dismissed as withdrawn on 25.07.2025, when the following order was passed:

*“Faced with the situation that the FIR-complainant and victim are yet to be examined as prosecution witnesses, learned counsel appearing for the petitioner seeks to withdraw the present petition at this stage.
Ordered accordingly.”*

A perusal of the *zimni* orders dated 02.09.2025, 04.10.2025 & 29.11.2025 passed by the trial Court reflects that the prime prosecution

CRM-M-66484-2025

witnesses are deliberately trying to avoid appearing as prosecution witnesses.

The trial Court was constrained to issue bailable/ non-bailable warrants against them and now even issued warrants of arrest. Keeping in view the factual *milieu* of the case in hand; especially factum of extended incarceration of the petitioner and the procrastination of trial, folly whereof is not attributable to the petitioner, this Court is inclined to affirmatively consider the instant plea for bail. A profitable reference, in this regard, can be made to a judgment of this Court passed in ***CRA-S-2332-2023*** titled as ***Rafiq Khan versus State of Haryana and another***, relevant whereof reads as under:

“10. As an epilogue to the above discussion, the following principles emerge:

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

6.4. As per custody certificate dated 13.01.2026 filed by learned State counsel, the petitioner has already suffered incarceration for a period of 01 year

CRM-M-66484-2025

and 15 days. Further, as per the said custody certificate, the petitioner is stated to be involved in other FIR(s). However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in *Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012 (1) RCR (Criminal) 586*; a Division Bench judgment of the Hon'ble Calcutta High Court in case of *Sridhar Das v. State, 1998 (2) RCR (Criminal) 477* & judgments of this Court in CRM-M No.38822-2022 titled as *Akhilesh Singh v. State of Haryana*, decided on 29.11.2021, and *Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191*.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.

CRM-M-66484-2025

- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 15, 2026

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No