



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-62210-2024
DECIDED ON: 28.03.2025

SARABJEET KAUR @ PAPLI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amandeep Singh Rai, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 (439 Cr.P.C.) for grant of regular bail to the petitioner in FIR No.75, dated 19.08.2024, under Section 105 of the BNS, 2023, registered at Police Station Maloud, District Ludhiana(Punjab).
2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Statement of Shah Mohammad Ali, son of Shamshad Ali, resident of Village Somal Kheri, Police Station Maloud, District Ludhiana, aged about 40 years (98551-57000). Stated that I am a resident of the above address and have been working as a driver for the last 25 years. My friend, Mohit Goel, alias Charlie, son of Parveen Goel, is a resident of Ward No. 6, whose parents reside in Canada. His younger brother resides in Delhi. Mohit Goel, alias Charlie, aged 2-year-old man, about 35 years old, resides alone at his home. He usually used to meet me. Sometime ago,

due to bad company, he had become habitual of taking intoxicants. I used to stop him, but he never listened to me. Regarding whom, I informed his mother/father and brother that Mohit Goel, alias Charlie, had started taking intoxicants. Then I asked them to make him understand that he should not take intoxicants. About 5-6 months ago, Mohit Goel, alias Charlie's brother, took him to Delhi. After residing at Delhi for 5-6 months, he came to his house about 1 month ago. After coming home again, he started consuming intoxicants About 20 days ago, Mohit Goel, alias Charlie, started telling me that we had to go to Village Dhamot Kalan for some work. Then, I went with Charlie in his car to Village Dhamot Kalan to someone's house. One person, after handing over the envelope to Mohit Goel, alias Charlie, took Rs. 5,000/- from him. Then, I asked my friend Charlie that this was not a good thing and told the person named Jagdeep Singh, alias Jaggu, who gave the intoxicant, that you were doing a very wrong job. The intoxicant powder you had given could cause his death. Please don't give the intoxicant to my friend. However, Jaggu, the person, ignored my calls and kept giving the intoxicant to my friend. In spite of my saying again and again that his death could occur due to a high/low dose of this intoxicant. Please don't give him the intoxicant powder. Today, I came to know that my friend Mohit Goel, alias Charlie, died due to a high dose of the intoxicant powder. This death has occurred due to the above said Jagdeep Singh Alias Jaggu, in spite of my asking again and again that with this intoxicant death can occur, he has knowingly, without any care given this white (intoxicant) to my friend Mohit Goel Alias Charlie. Due to this his death has occurred. Jagdeep Singh Alias Jaggu is responsible for his death. Against whom appropriate legal action be taken. The statement has been recorded with you. Heard it. It is correct. Sd/-Shah. M. Ali (Shah Mohammad Ali) 98551-57000. Attested Sd/-Avtar Singh ASI, Police Station Maloud, Dated 19-08-2024. Police Proceedings:- Today 1 ASI along with HC Amarjit Singh, 674/Khanna was present at Police Station then above said

Shah Mohammad Ali came present to me, who by coming present to me got recorded his above said statement. Whose statement after writing was read over to him. Who, after reading and admitting his statement to be correct, signed under his statement in English which I Attested. From the statement offense under Section 105 BNS is found to be made out. Upon which, I ASI, after handing over the ruka for registration of case to MHC Harjinder Singh 492/K. After registering the case number will be intimated. DCR Khanna will be informed. Special reports will be issued. I ASI along with companions is moving to the spot. Sd/- Avtar Singh ASI, Police Station Maloud. ”

3. Today, medical status report dated 23.03.2025 by way of an affidavit of Jaspal Singh Khaira, Superintendent, Women Jail Ludhiana (Punjab) has been filed on behalf of the respondent, which is taken on record. Copy thereof has been supplied to the learned counsel for the petitioner today in Court.

4. According to the said affidavit, the medical health of the petitioner has been got verified which has been opined as under:-

'This is to submit that inmate Sarabjeet Kaur D/o Kulwant Singh entered the jail on 30.08.2024 is presently confined in Women Jail Ludhiana. Patient is 24 Years old. Patient complained of Neck Swelling with Pain for which she was referred to Civil Hospital Ludhiana. She was referred on 09.10.2024, 09.12.2024, 23.12.2024 & 02.01.2025, where she was treated by concerned Doctors. Later again she was sent to Civil Hospital Ludhiana for US neck & NAC on 18.01.2025, 02.02.2025. Her Civil Hospital Ludhiana FNAC report showed Lymphoma??.So she was referred to PGI Chandigarh. She went to 06.02.2025 to PGI Chandigarh. Then again on 10.02.2025, 13.02.2025, 15.02.2025,

18.02.2025, 22.02.2025, 25.02.2025, 28.02.2025, 03.03.2025, 06.03.2025, 11.03.2025 & 17.03.3025. As per GI Chandigarh report patient is suffering from cervical Lymphadenopathy (Reactive Lymphoid Hyperplasia) & she has been called again after 1 month i.e 22.04.2025 for follow up. Patient is given symptomatic treatment from time to time. Patient is taking Psychiatric medicine also. Patient is ambulatory & her Vitals are reassuring.

5. According to the custody certificate filed today in Court by learned State counsel, the petitioner has incarcerated 06 months and 26 days by now with the prosecution also having not examined a single witness out of total 10 prosecution witnesses, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period as it would be an infringement of the fundamental right as enshrined under Article 21 of the Constitution of India.

6. This Court is also conscious of the nature of ailments being suffered by the present petitioner who is suffering from cervical Lymphadenopathy (Reactive Lymphoid Hyperplasia) and has also been called for follow up on 22.04.2025 and has been taking Psychiatric medicine also. The doctors have further opined that her vitals are reassuring meaning thereby the same is not upto the mark as of now.

7. In the present case, the petitioner needs medical attention and care who is also undergoing Psychiatric treatment and retaining the petitioner behind bars in such state of mind will likely hamper her health

further. Therefore, this Court finds no cogent reason to deny the concession of regular bail to the petitioner.

8. 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.”

9. 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.

10. This Court taking a lenient view in the matter and in the light of the medical health of the petitioner, directs the petitioner be released on regular bail on her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

11. In the afore-said terms, the present petition is hereby allowed.

12. 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

28.03.2025

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No