220 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-54583-2024
Date of Decision:27.05.2025

Sahil Kumar @ Sahil Koyar …Petitioner

vs.

State of Haryana …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Sandeep Singh Jattan, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

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N.S.Shekhawat J. (Oral)

1. The petitioner has filed the instant petition under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to grant regular bail to him in case FIR No.54 dated 13.08.2020 registered under Sections 307, 341, 34 of IPC (Sections 302, 120-B of IPC added later on) and Section 25(1-B), 27(1), 29(b) of Arms Act, at Police Station Krishna Gate Thanesar, District Kurukshetra.

2. The FIR in the present case was registered on the basis of the statement made by Akshya son of Rajesh and the same has been reproduced below:-

> *"Statement of Akshya son of Sh. Rajesh Resident of Village Dhatera, Police Station Jhinjhana, District Shamli (UP) Age 25 years M.No.6395741119. Stated that i am resident of above said address and 10+2 pass. Do the agriculture work. My sister Rimpy married with Shubham s/o Vejinder resident of Saidpura Police Station Nagal District Saharanjpur. That Rimpy is daughter*

of my real Tau (elder brother of my father). Many years ago Rajesh @ Jassi @ Kago son of Uday Chand resident of Haibatpur Police Station Nigdu District Karnal is maternal uncle in relation of my Jija Shubham, was having good relation with each other. Both of them caught in smuggling of liquor, the case of which is registered at District Saharajpur. In this regard due to money transaction and due to sour relationship between them Rajesh @ Kagi started keeping grudge in his mind for Shubham and once Rajesh @ Jassi attacked upon Shubham with Kassi (spade) that my Jija Shubham from the last ¾ years is residing on rent at Akash Nagar Kurukshetra along with his family and do the work of medicines. That I have come at the house of my Jija Shubham from yesterday i.e. 12.08.2020 to meet. Today time about 1.15 PM in the afternoon I and my Jija Shubham in the afternoon to have lunch ride on Motorcycle No.UP-11AC-8940 Make Discover. That motorcycle was driven by Shubham. I was sitting pillion. We both from the house of Shubham on taking turn at 200 meter on T. Point, two boys on one motorcycle came in front, they by stopping their motorcycle in front of our motorcycle, the boy on pillion after alighting fired on my Jija Shubham which hit on the right arm of the Shubham we both fell down along with motorcycle. I started running, then fired upon me also which was missed and while running I. heard from behind the sound of bullet fire, that I returned on the spot after some time, then I saw that bullet has hit on the chest of my Jija Shubham and blood was oozing and Shubham is lying on ramp near the motorcycle and he told me that they boy who has fired is Rajesh @ Jassi@ Kagi resident of Haibatpur District Karnal and there was one more boy with him. Then I immediately brought Car from the house of my Jija and got admitted my Jija by putting in Car for treatment at Signus Huspital Kurukshetra. That Rajesh @ Kagi and his friends due to keeping old enmity had fired to kill upon my Jija Shubham

and upon me. Legal action be taken against them. I have got recorded my statement in signus Hospital Kurukshetra, read it, heard and correct. Sd/- Akashya, 6395741119 13/08/2020."

3. Learned counsel for the petitioner contends that the petitioner was not named in the FIR nor any specific role was assigned to him. However, during the course of investigation, one pistol was planted on him and it was alleged that the petitioner had fired a shot at Shubham and Shubham had succumbed to the injuries. Learned counsel further contends that even the petitioner had no motive to cause injuries to Shubham in the present case. Moreover, the statement of complainant-Akshya has already been recorded against the present petitioner and now after the arrest of other accused, he is intentionally not appearing before the trial Court. Thus, the trial has been unreasonably delayed in the present case. The petitioner was arrested in the present case on 08.09.2020 and is in custody for the last more than 4 years and 8 months. As per him, the case is still listed for prosecution evidence and is not likely to over soon.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that serious allegations have been levelled against the present petitioner and he does not deserve the concession of bail by this Court.

5. I have heard the learned counsel for the parties and perused the record.

6. It has been held by the Hon'ble Supreme Court in the matter of **“Ranjan Dwivedi Vs. CBI, through the Director General, 2012(8) SCC 495; 2012 (4) RCR (Criminal) 880”** as follows:-

> “14. In Kartar Singh v. State of Punjab, (supra), another Constitution Bench considered the right to speedy trial and opined that the delay is dependent on the circumstances of each case, because reasons for delay will vary. This Court held :
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> > "84. The right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...". It may be pointed out, in this connection, that there is a Federal Act of 1974 called 'Speedy Trial Act' establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases. [See Black's Law Dictionary, 6th Edn. page 1400].
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> > 85. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. This Court in Hussainara Khatoon v. Home Secretary, AIR 1979 Supreme Court 1360, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus: (SCC p. 89, para 5)

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

See also (1) Sunil Batra v. Delhi Administration (I), (2) Hussainara Khatoon (I) v. Home Secretary, State of Bihar, (3) Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, Patna, (4) Hussainara Khatoon (VI) v. Home Secretary, State of Bihar, Govt. of Bihar, Patna, (5) Kadra Pahadia v. State of Bihar (II), (6) T.V. Vatheeswaran v. State of T.N., and (7) Abdul Rehman Antulay v. R.S. Nayak.

88. Thus this Court by a line of judicial pronouncements has emphasised and re-emphasised that speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 and the law must ensure 'reasonable, just and fair' procedure which has a creative connotation after the decision of this Court in Maneka Gandhi."

The Court further observed :

"92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon the show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of

witness or witnesses, crowded dockets on the file of the court etc."

7. Hon'ble the Supreme Court in **Gudikanti Narasimhulu and others v. Public Prosecutor, AIR 1978 SC 429** has held as under:-

> *"Bail or Jail"- at the pre-trial or post-conviction stage - largely hinged on judicial discretion. The learned Judge held that personal liberty was too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. It was further held that deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. The learned Judge quoted Lord Russel who had said that bail was not to be withheld as a punishment and that the requirements as to bail were merely to secure the attendance of the prisoner at trial. According to V.R. Krishna Iyer, J., the principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment. After holding that it makes sense to assume that a man on bail has a better chance to prepare and present his case than one remanded in custody the learned Judge observed that if public justice is to be promoted mechanical detention should be demoted.*

8. In **Gurbaksh Singh Sibbia etc Vs The State of Punjab, AIR 1980 SC 1632**, Hon'ble the Supreme Court has observed as under:-

> *"Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back*

as in 1924 it was held by the High Court of Calcutta in Nagendra Vs. King Emperor, AIR 1924 Calcutta 476, that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the Allahabad High Court in ***K.N. Joglekar Vs. Emperor, AIR 1931 Allahabad 504****, that Section 498 of the Old Code which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. The Supreme Court referred also the decision of the Allahabad High Court in* ***Emperor Vs. H.L. Hutchinson, AIR 1931 Allahabad 356****, wherein it was held that the principle to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that*

may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows :

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

9. At this stage, it is observed that the object of the bail is to secure the presence of the accused at the trial only. It is also observed that the object of bail is neither punitive nor preventive and deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. Hon'ble the Supreme Court has observed in catena of judgments that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he may influence the witnesses. It is appropriate to say that pre-conviction detention should not be resorted to, except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

10. In the present case, no doubt serious allegations have been levelled against the petitioner but he is in custody for the last more than 04 years and 08

months. The case is still listed for prosecution evidence and there is no likelihood of early conclusion of the trial.

11. Without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate, concerned, subject to the following conditions:-

(i) 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 to disclose such facts to the Court or to any other authority.
(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.
(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.
(vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.
(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(N.S.SHEKHAWAT)
JUDGE

27.05.2025
hemlata

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No