



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211-2

CRM-M-20327-2025
DATE OF DECISION: 25.04.2025

ASHOK KUMAR ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raman Chawla, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

Mr. Vaneet Soni, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. **Prayer**

This petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for grant of regular bail to the petitioner in case FIR No. 234 dated 28.09.2024 under Sections 109(1), 115, 190, 191(2) 191(3), 351(2), of The Bharatiya Nyaya Sanhita (BNS Act 2023) (during the report U/S. 193 of B.N.S. Act 2023 the sections 109(1), 115, 117(2), 238, 238(a), 3(5) 351(3) were added) registered at P.S. Sanoli District Panipat.

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

‘Copy of the written complaint is to, SHO Sahib, Police Station Sanauli Panipat. Subject: accused No. 1 Ashok son of



Katar Singh, accused No. 2 Monti son of Ashok, accused No. 3 Adesh son of Dheeraj, accused No. 4 Sachin son of Sethpal, accused, accused No. 5 Vinod son of Katar Singh, accused No. 6 Harsh son of Vinod accused no. 7 Rohit son of Jagbir, accused no. 8 Mohit son of Jagbir, accused no. 1 Savita wife of Dheeraj. accused no. 10 Kaushal wife of Vinod and others. Sir, I humbly request that I, Kiranpal son of Shyam Singh is resident of village Chhajpur Kalan Panipat. On 25.09.2024, Shri Dharm Singh Choukkar, candidate of Vidhan Sabha Congress Party came to our village to seek votes. But on that day, at night, my brother had an altercation with Adesh and other people. But Dharm Singh Choukkar intervened and pacified both the parties and there was no enmity between us. But on 26.09.2024, when around 09:30 am, I and my real brother Narender were going to our uncle house. On the way, when we reached near the chowk of old Panchayat House, the above accused were already sitting there in ambush position and during that time Adesh raised a lalkara that you were spare last night but now you will not be spare. Then my brother tried to calm him down and asked the reason. I also told them that we have no quarrel with them. But they did not listen to a single word of ours and all of them caught us and started dragging us in the street of the Panchayat House. Meanwhile, I tried to explain to them that we have no quarrel or enmity with you, but they did not listen me and Adesh took an iron rod and tried to hit my brother on the head, but he stopped the rod with his right hand, due to which his hand broken. After that, all the above accused attacked us with sticks, iron rods and swords. Sachin and Monti were also saying that kill both of them so that they do not play politics in front of us. Thereafter, Sachin hit me on my head with an iron rod with the intention of killing me and I fell down due to the rod. Then Vinod gave a stick blow in my stomach, Ashok gave a blow with iron rod and Harsh hit me with a stick and the above ladies hit me with lathis in my stomach. When I was lying on the ground in pain, I saw that Mohit and Rohit caught my brother Narender and Monti hit him with a sword on his head, due to which he got injury in the head and fell down. After falling, he started calling



for help. Hearing our screams, my uncle's son, my brother's son and 15-20 other villagers came to the spot and freed us from their clutches, while returning back Ashok abused us and said that I myself in police. Let's see who helps you. You cannot do anything to me. While returning, the above accused also warned us that if we meet alone anywhere again or tell anything about this incident to the police, they will kill us. After that we both of us were brought to Max Hospital Panipat by our relatives and our treatment is still going on. Hence, it is requested that our life is in danger from the above accused and strict legal action be taken against them and we justice be done. We will be very grateful to you. Applicant-Kiranpal son of Shri Shyam Singh resident of village Chhajpur-Kalan Panipat. Date-28.09.24 Police proceedings- On 26.09.24, a ruqa was received at the police station from Max Plus Hospital Panipat that Narender Kumar, Kiranpal sons of Shyam Lal resident of village Chhajpur-Kalan District Panipat are injured in a fight and are admitted for treatment, on which information, Head Constable Ajay No. 24 reached Max Plus Hospital Panipat. After taking opinion from Doctor Saheb, the victim Narender was found Fit for Statement and the injured Kiranpal was found Unfit for Statement. Medical certificates were obtained. The injured records could not be obtained. Yesterday on 27.09.24, the injured Narender sent his handwritten application to the police station through his brother Mitrapal and others. Since the records of the injured were not available and were not verified by higher officials, a report was registered in rapat roznaamcha. Today on 28.09.2024, the concerned SHO and Satish Kumar HPS Deputy Superintendent of Police Headquarter, Panipat went to the spot and verified the incident. Thereafter, myself ASI along with BHC Ravindra 383 reached Max Hospital, Panipat for further proceedings. Doctor sahab wrote a Fit for Statement to the injured Kiranpal son of Shyam Lal. The injured Kiranpal son of Shyam Lal presented a typed written application to myself ASI. MLR's of the injured were obtained. In the MLR NO-RD/248/SEPT/2024 dated 26.09.24 of Narender Kumar, Dr. Sahab has written about a total of 2 injuries, injury no.-1 Advice ortho opinion, X-ray RT FA, APLAT, injury no.



2 Neuro Surgeon opinion, Nect Head and in injured Kiranpal MLR NO-MKS/26/2024 dated 26.09.24, Dr. Sahab has written about a total of 4 injuries, injury no. 1 Advice NCCT Head, injury no. 2 RT Black eye, injury no. 3 Advice C'ECT Abdomen, X-ray chest and injury no. 4 Advice X-ray chest PAB Neuro Surgeon opinion, Surgeon opinion. As per the written application, and after perusal of MLR's and as per verification of higher officials, the offence under Sections 115(2),190,191(2), 191 (3), 109(1),351(2) BNS are found to be committed. The complaint for registration of the case is being sent to the police station through EHC Ravindra 383. Please be informed with the case number. I, ASI along with the relatives of the injured, have left for the spot, village Chhajpur Kalan. Today - Max Plus Hospital Sanoli Road Panipat SD - ASI Surjeet Singh Police Station Sanoli Panipat Date 28.09.24.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner at the outset submits that the matter has been settled between the parties and in this regard affidavit was executed by both the parties. He submits that the present case is a version and cross-version and no recovery is to be effected from the petitioner. He has further argued that the antecedents of the petitioner are clean. Moreso, the investigation in this case is complete as challan stands presented on 14.02.2025, charges are yet to be framed and 30 prosecution witnesses are cited to be examined, which is sufficient to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State and counsel for the 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, as per



the same the petitioner has undergone custody for a period of 3 months and 18 days.

Learned counsel for the complainant has no objection if the petitioner has been granted concession of regular bail.

4. Analysis

From the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 3 months and 18 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, moreover, the matter has been compromised between the parties, hence, chances of acquittal cannot be ruled out whereas in the instant case, challan stands presented on 14.02.2025, charges are yet to be framed and 30 prosecution witnesses are cited to be examined, which is sufficient 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. Relief

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

25.04.2025

anuradha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*