



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

313

CRM-M-4831-2025
DATE OF DECISION: 03.02.2025

PAWAN KUMAR ALIAS KOKA POPLI
...PETITIONER

Versus

STATE OF PUNJAB
... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. I.S. Dhaliwal, Advocate for the petitioner(s).
Mr. Rajiv Verma, DAG, Punjab.
Mr. R.S. Sekhon, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for the grant of regular bail in FIR No.147 dated 25.08.2018 (Annexure P-1) Under Section 307, 452, 506, 427, 148, 149 IPC registered at Police Station City Malout, District Sri Muktsar Sahib (Annexure P-1)

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

‘Statement of Sunil Kumar alias Shanti son of Suraj Bal Sharma resident of Ward No.6, Near Jandi Wala Chowk, Camp Malout, aged about 40 years M.No.79864-95677 stated that I am resident of above mentioned address and working in the Car Market Malout along with my elder brother Davinder Sharma. On dated 24.08.2018 time about 12 in the night we returned to our house from Mata Chintpurni and went to sleep after taking meals. On dated 25.08.2018 at about 1.30 AM, hue and cries



were raised in front of my house and heard the noise of hitting brick bat blows on the windows of our house. When I and my father Suraj Bal Sharma saw that the street light was on, outside of our house, at that time, in front of our house Raj Kumar Grover son of Des Raj armed with Wooden stick, Rohit Bathla son of Jai Chand Bathla armed with Kirpan, Ladi resident of village Karamgarh armed with Axe, Kanu Grover son of Raj Kumar Grover, Kapil Dawar son of Bania Dabar, Rocky Dabar s/o not known, Gaggu Kalra son of Pappu Kalra, Mannu Popli s/o Koka Popli, Nanni alias Shiva s/o Koka Popli, Koka Popli s/o Piare Lal Popli, Abhi Grover s/o Mahinderpal, Babu Grover s/o Jagdish Grover and 4-5 unknown persons to whom I can identify on coming in front of me who were armed with brick bats and they are threatening me and my family members to kill and entered into the drawing room of our house by braking up the window glasses and Kanu Grover gave brick bat blow towards me with an intention to kill me which hit on my head. My family member raised a noise 'Mar Ditta Mar Ditta' and thereafter the neighbours gathered there and all the accused persons ran away from the spot after giving threats to kill and by raising lalkaras and after leaving the weapons at the spot in one car Honda City baring No.7419 and on the backside written Sandhu in Punjabi and remaining are gone on their motorcycles. This occurrence was seen by my father Suraj Bal Sharma. After arranging the vehicle, I got admitted in the Civil Hospital Malout by my nephew Aman Sharma and where I am under treatment. The statement has been recorded which is heard and correct. The legal action may kindly be taken against the above said persons. Sd/-Sunil Kumar above verified Sd/ Suraj Bal Sharma s/o Sh. Buta Ram resident of Jandiwala Chowk Camp Malout verified by Sd/-Sukhraj Singh ASI PS City Malout, dated 25.08.2018.'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and no specific injury has been attributed to him, moreover co-accused has already been granted concession of bail vide order dated 24.04.2024 passed in CRM-M-19009-2024. He submits that the parties have entered into compromise and complainant also has no objection if the petitioner is granted concession of bail, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State and 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. According to which, the petitioner is behind bars for 5 months and 13 days.

Learned State Counsel on instructions from the Investigating Officer submits that earlier the petitioner was declared Proclaimed offender and subsequently surrendered in August, 2024 but they are not in a position to controvert the submissions made by learned counsel for the petitioner that the matter has been compromised between the parties and have no objection if the petitioner is granted concession of bail.

4. Analysis

Be that as it may, from the above discussion, it can be



culled out that the petitioner has already suffered sufficient incarceration i.e. 5 months and 13 days, similarly situated co-accused has already been granted concession of bail by this Court, the matter admittedly has been settled between the parties and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 19.10.2018 and supplementary challan in April, 2019, charges stands framed on 31.10.2023 and out of 10 prosecution witnesses, none has been examined so far which is sufficient for this Court 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. Decision:

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

03.02.2025
anuradha

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No