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

CRM-M-56987-2024 (O&M)

Date of Decision: 17.02.2025

GAGANDEEP SINGH @ NIKKA

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Tanvir Singh Attariwala, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.219 dated 03.11.2020, registered for the offences punishable under Sections 307, 148 and 149 of IPC and Sections 25 and 27 of Arms Act (Section 302 IPC and Sections 54 and 59 of Arms Act added later on) at Police Station Dharamkot, District Moga.

2. The case set up in the FIR in question (as set out by the petitioner in the present petition) is as follows:-

“Statement of Gagu Singh son of Chinda Singh son of Dayal Singh resident of Rera PS Dharamkot District Moga aged about 20 years M.NO. 9779761632. It is stated that I am resident of above said address and am driving a tractor trollo for transporting sand with Jagsir Singh son of Pal Singh resident of Rerwa Yesterday at about 09:30 PM I alongwith Harbans Singh son of Balbir Singh who is son of my Taya(uncle) had gone to leave the tractor trollo of Jagsir Singh at his house and after leaving tractor trollo I saw Harbans Singh, Manpreet Singh son of Gurdeep Singh, Petta and Jagsir Singh son of Pal Singh, Pal Singh son of Nazar Singh standing on the road infront of house of Jagsir Singh. There was a light of electric bulb and I saw that Nikka Singh son of Kala Singh R/o Chuga Basti Dharamkot alongwith 2 unknown boys came from Sherpur Taiba side on motorcycle Platina No. PB-29-AA-3455 and stopped near us Meanwhile one motorcycle CT 100 came from Rerwa side being driven by Kulwinder Singh son of Karnail Singh resident of Rerwa and Gabar Singh son of Kala Singh, Kala



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Singh son of unknown resident of Chuga Basti were sitting behind and the motorcycle stopped near us and the aforesaid persons started abusing us Kala Singh was armed with 12 bore gun and Nika Singh was carrying pistol and the remaining persons were also armed with kirpan sand baseball Kala Singh raised lalkara that today Jagsir Singh Pal and Gaggu Singh be taught lesson for filling sand in their trolly from the sand pits of village Sagera and then Kala Singh fired a shot from his gun with an intention to kill Pal Singh and Pal Singh fell down after being hit by the gunshot. Then Kala Singh fired another shot to kill me and the pellets of same hit my legs. Nika Singh fired shot from his pistol with an intention to kill Jagsir Singh and I and Jagsir Singh got injured because of that fireshots and fell down. All of us raised alarm and all the accused ran away from the spot alongwith their weapons and motorcycles.”

3. Learned counsel for the petitioner has submitted that the petitioner is in custody since 24.11.2020. Learned counsel for the petitioner has iterated that there is delay in registration of the FIR which is fatal to the prosecution case. It has been argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has argued that there is no tangible prosecution evidence available against the petitioner. Learned counsel for the petitioner has further submitted that the petitioner is in custody for more than 4 years and the trial is not likely to conclude in the near future. Thus, regular bail is prayed for.

4. Learned State counsel has argued that the allegations raised against the petitioner are serious in nature. Learned State counsel has further argued that the petitioner before this Court is the prime accused and the weapon used in the murder has also been recovered from him and thus he does not deserve the concession of the regular bail.

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

6. The petitioner was arrested on 24.11.2020 whereinafter investigation was carried out & challan was presented on 12.02.2021. Thereafter, supplementary challan was filed on 20.12.2022. Charges in the case in question were framed on 10.01.2023. Total 23 prosecution

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witnesses have been cited out of which only 4 witnesses have been examined till date. The rival contention of the learned counsel for the parties give rise to debatable issues which shall essentially be gone into 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 remaining prosecution evidence.

A perusal of the paper book reveals that the petitioner is in custody for more than 4 years and only 4 witnesses have been examined out of total 23 cited witnesses. From the material brought forward before this Court, it can not be deduced that the non-culmination of the trial can be attributed to the petitioner. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court in a case of '**Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another**' **decided in Criminal Appeal No.2787 of 2024 arising out of SLP (Crl) No.3809 of 2024**', relevant whereof reads as under:-

“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

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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.”

As per the custody certificate dated 16.02.2025 filed by the learned State counsel, the petitioner has suffered incarceration for more than 04 years and 02 months. Further, as per the said custody certificate, the petitioner is said to be involved in other FIR(s) also. Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. 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 vs. State of U.P. and another, 2012(1) R.C.R. (Criminal) 586***; a Division Bench judgment of the Hon'ble Calcutta High Court in case of ***Sridhar Das vs. State, 1998(2) R.C.R. (Criminal) 477*** & judgments of this Court in ***CRM-M-38822-2021*** titled as ***Akhilesh Singh vs. State of Haryana***, decided on 29.11.2021 and ***Balraj vs. State of Haryana, 1998(3) R.C.R. (Criminal) 191***. Suffice to say further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the present case.

7. In view of totality of factual matrix of the present case, the instant 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



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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.
- (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/Illaqha 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.



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

17.02.2025

Jasmine Kaur

**(SUMEET GOEL)
JUDGE**

Whether speaking/reasoned

Yes No

Whether reportable

Yes No