

2025:PHHC:065250



236 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25634-2025
DECIDED ON: 15.05.2025

JYOTI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. N.S. Dandiwala, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court under Section 482 of BNSS, 2023 for the 2nd time has been invoked for grant of regular bail to the petitioner in FIR No. 50, dated 23.03.2023, under Sections 302, 120-B and 34 IPC, registered at Police Station Dharamkot, District Moga.

2. Facts

Prosecution story setup in the present case as per the version in the FIR as under:-

“Kashmir Singh S/o Balkar Singh S/o Nihal Singh R/o Sherpur Taiban, Distt. Moga aged about 50 years Mob. No. 94637-80188 stated in the statement that I am resident of above mentioned address and working as an agriculturist. I have two daughters and two sons. My elder daughter Amarjeet Kaur @ Babboo aged about 25 years was married with Balwinder Singh @ Bindu S/o Mangat Singh of our village about 6 years ago. It was a love marriage, out of the wedlock two children were

born. Balwinder Singh @ Bindu was habitual of selling contraband and also in illicit relationship with other woman. Reason being my daughter use to stop him and thus, dispute remained between my daughter and Balwinder Singh a Bindu. Two days ago Balwinder Singh @ Bindu has withdrawn an amount of Rs. 80,000/- from the account of my daughter and this fact was disclosed by my daughter to me. On previous night, i.e. 22.03.2023 at about 10:00 p.m., I received a telephonic call from Balwinder Singh @ Bindu that at about 09:30 p.m. that I, Balwinder Singh @ Bindu was coming from the side of Village Daulewala towards Sherpur Taiban on his motorcycle with his wife Amarjeet Kaur @ Babboo. When they reached near the bridge of canal on the outskirts of village Sherpur Taiban then six riders on three motorcycles way laid them and inflicted injuries to his wife and ran away from the spot, I also ran away from the spot. When I along with his brother Jagir Singh were about to leave to go at the spot then it came into our knowledge that our daughter has been murdered and Balwinder Singh, etc. had taken her corpus to their home. Then they deposited her body in the mortuary of Civil Hospital, Moga by calling police. Today we reached at hospital and saw her body, there were injuries and cut marks on her right shoulder with other injuries and it was looking as she was murdered by strangulation. I have belief that my daughter Amarjeet Kaur was murdered by her husband namely Balwinder Singh @ Bindu in conspiracy with Jyoti, Sukhwinder Singh @ Gurpreet @ Gopi S/o Mehar Singh R/o Village Daulewala Mear and with some other unidentified persons because they were involved in the business of selling the contraband. I left my nephew Kirtan Singh S/o Jagir Singh near the dead body and came to record the statement then you met us near the around about of Dharampur. Action be taken. Statement has been heard which is correct. LTI Kashmir Singh corroborated by Sd/- Jagir Singh (Brother). Verified by Sd/- Jasvarinder Singh SHO Dharamkot. Dated 23.03.2023.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He further contends that the

star witnesses namely Kashmir Singh and Jangir Singh have not supported the case of the prosecution before the trial Court.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender, as he is also involved in other cases of similar nature and petitioner was conspired with main accused Balwinder Singh to commit murder of his wife.

4. **Analysis**

Be that as it may, considering the custody period i.e. 1 year 11 months and 29 days for which the petitioner has suffered incarceration added with the facts the star witnesses namely Kashmir Singh and Jangir Singh have turned hostile and prosecution could not link the role of Jyoti with main accused Balwinder Singh apart from that in the present case investigation is complete wherein after framing of charges on 11.12.2023, out of total 16 prosecution witnesses four have been examined so far, meaning thereby, conclusion of trial would take considerable time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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 “**Balwinder Singh versus State of Punjab and Another**”, **SLP (Crl.) No.8523/2024**. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,
A year whose days are long.”*

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “**Baljinder Singh alias Rock vs. State of Punjab**” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no

doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

5. **RELIEF:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

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

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

15.05.2025

sham

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No