

2025:PHHC:043378



216

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

**CRM-M-58952-2024
DECIDED ON: 01.04.2025**

**GURINDER SINGH ALIAS GORA ALIAS GURINDER PAL SINGH
.....PETITIONER**

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amaninder Preet, Advocate for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court under Section 483 BNSS, has been invoked for the 2nd time for grant of regular bail to the petitioner in case FIR No. 172 Dated 22.10.2020 Under Section 302, 120-B, 148, 149, 473, 212 (Added Later On) Indian Penal Code 1860 and 25, 27, 54, 59 Arms Act registered at P.S. Sadar Malout, District Sri Muktsar Sahib.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Rajveer Kaur W/O Ranjit Singh @ Rana S/O of Resham Singh resident of Bajakhana at present adopted son of Gurtej Singh S/o Jugraj Singh resident of Barkandi Road Shri Muktsar Sahib aged about 29 years Mob. 75279-95807. Stated

that I am resident of above mentioned address and do the household work. I got married to Ranjit Singh @ Rana approximately Two and half years (21/2 years) back and out of this wedlock I am blessed with daughter Kiranveer Kaur aged about one and half year (1 1/2 year). I am pregnant again and for that medicine is going on from Guru Nanak Hospital village Aulakh. Today I, alongwith my husband Ranjit Singh @ Rana in our car bearing No. PB 13 BB 5589 came from Muktsar to Aulakh for medicine and when our car reached in front of the hospital at GT Road village Aulakh then at about 3:00/3:30 PM evening, then three clean shaven young men came out of one swift car suddenly which was already parked there, then while I was looking at them, those three young men started firing blindly on my husband Ranjit Singh @ Rana. Upon my raising hue and cry, these three boys along with their weapons ran away from the spot in their car. I can identify these three unknown persons on being brought before me. Then I tried to take care of my husband who was already dead at the spot. My husband got bullet injuries on the right side of the nose, right side of neck, right cheek, right flank, left side of the chest, in the neck, left side of the stomach, on the bicep of left arm, left flank, down below the left flank, on the left side of the nose, left side of forehead and on the finger of left hand. Then I informed my relatives. Upon information my relatives reached and after leaving them for the protection of the dead body, I alongwith my relative Balwinder Singh S/o Surjeet Singh R/o Shri Muktsar Sahib was going to inform you, that you met me on the way. Statement has been given to you, read the same and is correct. I am claimant, action be taken. Sd/- Rajveer Kaur along with statement Sd/”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner was not named in the FIR and later on on the basis of disclosure statement of

co-accused Yashpal @ Sarpanch. He further argued that PW-1, wife of the deceased and PW-2 mother of the deceased have turned hostile before the trial Court and the statements have been produced today in Court, which are taken on record as Annexure A collectively. He asserts that the co-accused persons namely Nitin Kumar & Jarmal Singh @ Jarmanjit Singh have already been granted the concession of regular bail vide orders dated 17.08.2023 & 29.02.2025 (Annexures P-9 & P-10 respectively) passed in CRM-M-10472-2023 & CRM-M-61487-2023.

On behalf of the State

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.

Learned State Counsel prays for dismissal of the present petition stating that the petitioner is involved in various other cases, meaning thereby, he is habitual offender.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration of 3 years, 11 months and 4 days and after framing of charges on 18.12.2024, out of total 39 prosecution witnesses only one has been examined so far, which is sufficient for this Court to infer that the conclusion of trial shall take considerable time added with the fact that PW-1, wife of the deceased and PW-2 mother of the deceased have turned hostile before the trial Court, hence there is every probability of earning acquittal, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved

beyond reasonable doubt, 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 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 “*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.

As far as the contention of learned State counsel with regard to 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 lend the petitioner in a situation of denial 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 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.

01.04.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*