

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

239

CRM-M-668-2025
DATE OF DECISION: 16.01.2025

VIVEK KUMAR ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sudesh Sahi, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of B.N.S.S for grant of Regular Bail to the Petitioner in case FIR No. 88 (ANNEXURE P-1) dated 05.04.2024, Under Sections 399, 402 of IPC and Section of 25 Arms Act. P.S. Sahnawal, District Ludhiana.

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

‘Chief Officer police station Sahnawal Ludhiana today I ASI along with HC Beant Singh No. 874/Ludhi., S/Ct Deepak No: 3879/Ludhi., PHO Sham Lal No: 16090 and PHO Shiv Prashad No: 16494 were riding on Government vehicle Scorpio No. PB-10CB-0313 whose driver was PHO Mintu Singh No: 16579 were patrolling and doing checking regarding suspicious persons on 33 Feet road Gyaspura where a secret informer appeared before me and declared in isolation that, Ashok Kumar son of Prameshwar Shah resident of Street No: 2 Lakshmi Nagar Giaspura Ludhiana, Dharminder Singh son of Rajdev Singh resident of Samrat Colony Ludhiana, Gobind Singh son of Rajdev Singh resident of Samrat Colony Ludhiana, Mukesh Kumar alias Arun son of Nand Kishore



Singh resident of Samrat Colony Ludhiana, Himmat Singh son of Gurcharan Singh resident of Jaspal Bangar Ludhiana, Sunder Yadav Son of Gaya Ram Yadav resident of Jaspal Bangar Ludhiana, Vivek Kumar son of Damru Singh resident of Karamjit Nagar Lohara Ludhiana, Karan Rajput son of Jai Shri resident of Gobind Nagar Shimlapuri Ludhiana, Manoj Kumar alias Messi son of Brij Lal resident of Gobind Nagar Shimlapuri Ludhiana and Deepak Kumar alias Aloo son of Ramnishad resident of Gobind Nagar Shimlapuri Ludhiana who all have now gathered in Haryana Ground Gyaspura Ludhiana. Who are planning to commit robbery. They are possessing illegal weapons, deadly weapons, kripana/Iron Daah, car Alto No. PB-10-JE-0936 color white and several motorcycles. In addition, there are many other cases of looting registered against them in various police stations. If the Haryana ground is raided now, all the above said with deadly weapons and vehicles can be apprehended who are planning to rob. The information is correct and reliable. The act of above all of planning to commit robbery, possession of illegal arms, deadly weapons etc. attracts the provisions of 399, 402- IPC and 25 Arms Act. Accordingly Ruqa is prepared against Ashok Kumar son of Prameshwar Shah resident of Street No: 2 Lakshmi Nagar Gyaspura Ludhiana. Dharminder Singh son of Rajdev Singh resident of Samrat Colony Ludhiana, Gobind Singh son of Rajdev Singh resident of Samrat Colony Ludhiana, Mukesh Kumar alias Arun son of Nand Kishore Singh resident of Samrat Colony Ludhiana, Himmat Singh son of Gurcharan Singh resident of Jaspal Bangar Ludhiana, Sunder Yadav son of Gaya Ram Yadav resident of Jaspal Bangar Ludhiana, Vivek Kumar son of Damru Singh resident of Karamjit Nagar Lohara Ludhiana, Karan Rajput son of Jai Sri resident of Gobind Nagar Shimlapuri Ludhiana, Manoj Kumar alias Messi son of Brij Lal resident of Gobind Nagar Shimlapuri Ludhiana and Deepak Kumar alias Aloo son of Ramnishad resident of Gobind Nagar Shimlapuri Ludhiana is sent to Police station by hand of PHG Shiv Prashad No: 16494 for registering a case and its number be informed accordingly. Special reports should be issued. I along with fellow employees is



departing for spot to conduct Raid. Haryana Ground Giaspura Ludhiana AT 7:00 PM Attestation Dharminder Singh ASI Chownki Giaspura, Police Station Sahnewal Ludhiana Dated 05-4-2024.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the allegations against the petitioner are that the petitioner along with other co-accused were planning to commit dacoity and were assembled at Haryana Ground, Gyaspura. He further submits that the FIR was lodged against some unknown persons and no specific allegations are levelled against him. It is his further contention that petitioner has no role to play in the present incident and he does not know any other alleged co-accused. He points out that the petitioner is not involved in any other case, meaning thereby he is not a habitual offender. He contends that the petitioner is on equal footing as that of co-accused Gobind Singh who has already been granted concession of regular bail vide order dated 02.08.2024 passed in CRM-M-35812-2024 (Annexure P-3), therefore, prays for grant of regular bail to the petitioner.

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. According to which, the petitioner is behind bars for 9 months and 7 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner along with other co-accused was planning to commit dacoity



and a Kirpan was also recovered from him but is not in a position to controvert the submissions made by learned counsel for the petitioner.

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. 9 months and 7 days and the similarly situated co-accused has already been granted concession of bail by this Court also the antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 04.06.2024 charges are yet to be framed, out of 11 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 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

16.01.2025
anuradha

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