

2025:PHHC:073696



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

**CRM-M-28869-2025
DATE OF DECISION: 28.05.2025**

**SHEKHAR ...PETITIONER
VERSUS**

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Sandeep Arora, Advocate
for the petitioner.

Mr. Rajiv Verma, Sr. DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This petition has been filed under Section 483 of BNSS 2023 for the 2nd time seeking regular bail to the petitioner in case FIR No.17 dated 27.01.2025 U/s 115(2), 118(1), 109, 191 (3), 190 of BNS, Section 25, 27 of Arms Act, 1959, Sections 238, 118(2), 132, 221 & 126(2) of BNS added later on, Police Station, Rama Mandi, Police Commissionerate Jalandhar

2. Facts

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

‘Statement of Gurwinder Singh S/o S. Balwinder Singh R/o H.No.1, Kalgidhar Avenue Extension, Mithapur, Jalandhar aed about 34 years. Mobile No.96152-00006. Stated that I resident of aforesaid and posted as ASI, CIA Staff, Commissionerate

Jalandhar in the Police Department. On 25.01.2025 I alongwith ASI Balkar Mattu No.2197/Jalandhar and head constable Lalit Kumar No.491/Jalandhar reached Dhankia Mohalla in connection with investigation and search of accused in FIR No.08 dated 15.01.2025 under Section 221, 132, 109 BNS 25, 27, 54-59 of ArmS Act, PS Bhargo Camp Jalandhar. When we reached Dhankiya Mohalla and were inquiring about the bad elements then Dharminder S/o Mohan Lal R/o Baldev Nagar, Jalandhar, Ravi Kumar S/o Rajinder Kumar R/o H.No.888774 Mohalla Baldev Nagar, Jalandhar, Manish S/o Vikram R/o Vinay Nagar, Jalandhar, Chela R/o Baldev Nagar, Jalandhar, Vijay R/o Baldev Nagar, Jalandhar, Sonu R/o Baldev Nagar and 10-12 persons who were armed with deadly weapons reached at the spot and surrounded us. They started arguing with us without any reason and started saying that how dare you entered our mohalla. I tried to make them understand that we have come to inquire about criminal persons in connection with a case and you do not argue with us without knowing the reasons do not interrupt in our duty. On making understand time and again them they did not understand and Shekhar S/o Mohan Lal raised a lalkara to catch hold and to kill them so that in future CIA staff personnel do not dare to enter our mohalla. The aforesaid persons started giving beatings to us. Shekhar S/o Mohan Lal gave a blow on my head with some sharp iron weapon due to which I suffered a serious injuries on my head. Akash Sahota gave a blow with some heavy weapon on my right ear due to which I suffered injury on my ear. On account of inflicting of the injury my hearing power got reduced. They also inflicted injuries to my associate Head Constable Lalit Kumar with an intention to kill him. The persons present at the spot also gave many injuries to me. Due to which I suffered internal injuries. Dharminder S/o Mohan Lal R/o Baldev Nagar, Lamba Pind, Jalandhar and Karan Kumar @Kanni R/o Dhankia Mohall, Jalandhar also

inflicted injuries to my associate Lali Kumr No.491/Jalandhar on his head with an intention to kill him due to which Lalit Kumar suffered two deep cuts on hishead. During this whole incident our associate ASI Balkar Mattu tried to save us from their clutches but even then they also kept on inflicting injuries. Only by chance ASI Balkar Mattu was got saved from their clutches. On hearing our alarm for help, the people from the surrounding gathered on the roofs of their houses but on account of fear nobody came forward but on seeing people gathering they all ran away from the spot alongwith their respective weapons. While running one of them fired short in the air in order to scare others. On which ASI Balkar Singh after arranging the vehicle got us admitted to Johal Hospital where the doctor provided treatment to us and issued MLR. Till now we were in a state of shock and were under the effect of medicines and therefore we were not in a position to record the statements. Now we have disclosed the truth to you. Legal action be taken against these persons. I have got recorded my statement and have heard it which is correct. Sd/-Gurwinder Singh ASI verified by Germanjit Singh ASI, PS Rama Mandi Jalandhar dated 27.01.2025. Action taken by police: Today 1 ASI alongwith ASI Jorawar Singh 1965, ASI Jatinder Kumar 62, S/CT Paramjit Singh 666 are present in the police station staht Gurwinder Singh aforesaid came present at PS and got recorded his aforesaid statement. Gurwinder Singh aforesaid after admitting his statement to be correct signed below the statement in English which was verified by me ASI. On MLR No.AC/09/2025 of Gurwinder Virk, Doctor has shown 6 injuries. Doctor has written injury No.1 sharp and remaining injuries as blunt and injury No.1,2 kept under observation and injury No.3,4,5,6 shown as simple. On MLR. No.AC/10/2025 of Lalit Kumar Doctor has shown 5 injuries, that doctor declared injury No.1 and 2 sharp and injuries No.3, 4, 5 as blunt and injury No.1, 2 shown as observation and injury No.3, 4, 5 were shown as

simple. From the statement and result of MLR offence under Section 115(2), 118(1), 109, 191(3), 190 BNS 25/27-54-59 Arms Act is found to be have been committed. On which for registering the FIR statement is handed over to MHC PS. After registration of the FIR number be informed. After issuance of special reports be sent to the Magistrate and senior officers. Control room be informed. I ASI alongwith associates and complainant heading toward at the place of occurrence. Today at the area: PS Rama Mandi Jalandhar at: 08.55 PM Sd/ Germanjit Singh ASI PS Rama Mandi Jalandhar dated 27.01.25. Today at PS: On receipt of aforesaid writing at PS, case after registration under the aforesaid sections and Act, original writing alongwith copy of FIR through special messenger S/CT Amandeep Singh 1987 is being sent to concerned ASI Germanjit Singh 1718 for investigation. SHO and police control room was informed through telephone. After issuance of special reports were sent through by hand CT Hariom Thakur 2219 to the Magistrate Jalandhar and Senior Officers. Compliance Report No.31 dated 27.01.25.'

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 that the complainants in the present case are the police officials. He submits that there is delay of more than two days in registration of the FIR. He seeks parity with the co-accused Karan @ Kanni who has already been granted concession of anticipatory bail by this Court vide order dated 27.03.2025 passed in CRM-M-16991-2025 (Annexure P-4).

On behalf of the State

Learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the

petitioner has suffered incarceration for a period of 3 months and 27 days and is also involved in another case under NDPS Act. He seeks dismissal of the present petition stating that the present petitioner and co-accused Karan Kumar caused injuries on the head of the Ct. Lalit Kumar with an intention to kill, however, not in a position to controvert the fact that the injury attributed to the present petitioner is simple in nature whereas, the injury which has been declared grievous in nature has been assigned to Akash Sahota.

4. **Analysis**

Nonetheless, taking into account that the petitioner stands on an equal footing with his co-accused, Karan @ Kanni, who has already been granted anticipatory bail by this Court vide order dated 27.03.2025 (Annexure P-4), and further considering that the grievous injury in question has been attributed to another co-accused, Akash Sahota, coupled with the fact that the investigation is still ongoing, this Court is of the opinion that the petitioner's continued detention for an indefinite period would not serve any meaningful 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 “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 him 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

28.05.2025

sham

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No