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2025:PHHC:128034



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

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Date of decision: September 16, 2025

Rakesh @ Rakesh Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present:-** Mr. Sahil Choudhary, Advocate for the petitioner.

Mr. Deepak Kumar Grewal, DAG Haryana.

SUMEET GOEL, J. (ORAL)

Present third petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') read with Section 528 of BNSS for grant of regular bail to the petitioner in case bearing FIR No.197 dated 13.05.2023, registered for the offences punishable under Sections 302, 201, 34 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station Barauda, District Sonipat.

2. The gravamen of allegations against the petitioner is that on 13.05.2024, at around 9:00 A.M., Nand Kishore (since deceased) had gone to Rohtak in a TATA Punch car bearing registration number HR11P-4696, owned by Sunny, a friend of Yogesh, for some work. Later the same day, at about 6:00 P.M., his body was discovered lying in the bushes near a *kucha* road adjacent to *Butana* Canal, and the said car also found parked nearby. The deceased had sustained multiple injuries on his head, forehead, left eye,

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and the back side of his left ear and face. In his supplementary statement, the complainant (brother of the deceased) disclosed that Nand Kishore had financial dealings with several individuals and had advanced a sum of ₹2,00,000 to Rakesh (petitioner herein), who was running a nut-bolt factory under the name ARB Tools. According to the complainant, Nand Kishore had informed him that the petitioner had taken money from him, and on the day of the incident, he had gone to Rohtak to recover the said amount. Based on this, suspicion was raised that Rakesh (petitioner herein), in conspiracy with others, had murdered Nand Kishore.

3. Learned counsel for the petitioner has iterated that the petitioner is in custody since 19.05.2023. Learned counsel has further iterated that the petitioner has been falsely implicated into the FIR in question. Learned counsel has iterated that the petitioner was not named in the FIR, which was lodged at the instance of FIR/complainant/ brother of the deceased. It is only in the supplementary statement recorded after some days that the name of the petitioner figured. Learned counsel has further iterated that the petitioner is in custody for more than 02 years and prime private prosecution witnesses stand examined. Thus, regular bail is prayed for.

4. Learned State counsel has opposed the present petition by arguing that the allegations raised against the petitioner are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel has further argued that there are Call Detail Records (CDR) available, which shows that location of the petitioner and the deceased was at the same place. Learned State counsel has also argued that there is CCTV footage available, which clearly shows complicity of the petitioner *qua* offence in question. Learned State counsel seeks to place on

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record the custody certificate dated 13.09.2025, in the Court today, which is taken on record.

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

6. The petitioner was arrested on 19.05.2023 whereinafter investigation was carried out and challan was presented on 05.08.2023. Total 27 prosecution witnesses have been cited, out of which, 19 have been examined till date. It is not in dispute that prime private prosecution witnesses, including the FIR/ complainant/ brother of the deceased stand examined. The rival contentions raised at Bar give rise to debatable issues, which shall be ratiocinated upon 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 prosecution evidence.

6.1. At this juncture, it would be apposite to refer herein a judgment of the Hon'ble Supreme Court in *Javed Gulam Nabi Shaikh vs. State of Maharashtra and anothers, 2024(3) RCR (Criminal) 494*, which reads thus:

“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.

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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 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.”*

6.2. Indubitably, the present petition is the third attempt by the petitioner to secure regular bail. The last bail plea preferred by the petitioner was dismissed as withdrawn on 11.02.2025. However, keeping in view extended custody of the petitioner for a period of more than 07 months and pace of the trial as there is no substantial progress in trial, this Court is inclined to affirmatively consider the instant plea for bail. A profitable reference, in this regard, can be made to a judgment of this Court passed in ***CRA-S-2332-2023*** titled as ***Rafiq Khan versus State of Haryana and another***, relevant whereof reads as under:

“10. *As an epilogue to the above discussion, the following principles emerge:*

I Second/successive regular bail petition(s) filed is maintainable in law & hence such petition ought not to be rejected solely on the ground of maintainability thereof.

II. Such second/successive regular bail petition(s) is maintainable whether earlier petition was dismissed as withdrawn/dismissed as not pressed/dismissed for non-prosecution or earlier petition was dismissed on merits.

III For the second/successive regular bail petition(s) to succeed, the petitioner/applicant shall be essentially/pertinently required to show substantial change in circumstances and showing of a mere superficial or ostensible change would not suffice. The metaphoric expression of seeking second/successive bail plea(s) ought not be abstracted into literal iterations of petition(s) without substantial, effective and consequential change in circumstances.

IV No exhaustive guidelines can possibly be laid down as to what would constitute substantial change in circumstances as every case has its own unique facts/circumstance. Making such an attempt is nothing but an utopian endeavour. Ergo, this issue is best left to the judicial wisdom and discretion of the Court dealing with such second/successive regular bail petition(s).

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V In case a Court chooses to grant second/successive regular bail petition(s), cogent and lucid reasons are pertinently required to be recorded for granting such plea despite such a plea being second/successive petition(s). In other words, the cause for a Court having successfully countenanced/entertained such second/successive petition(s) ought to be readily and clearly decipherable from the said order passed.”

6.3. As per custody certificate dated 13.09.2025 filed by learned State counsel, the petitioner has already suffered incarceration for a period of 02 years, 03 months and 25 days. Further, as per the said custody certificate, the petitioner is stated to be involved in other FIR(s). 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 v. State of U.P. and another, 2012 (1) RCR (Criminal) 586*, a Division Bench judgment of the Hon’ble Calcutta High Court in case of *Sridhar Das v. State, 1998 (2) RCR (Criminal) 477* & judgments of this Court in CRM-M No.38822-2022 titled as *Akhilesh Singh v. State of Haryana*, decided on 29.11.2021, and *Balraj v. State of Haryana, 1998 (3) RCR (Criminal) 191*.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present 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 may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:

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- (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/Illaqa 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.

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

(SUMEET GOEL)
JUDGE

September 16, 2025

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No