



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34476-2024
DECIDED ON: 24.04.2025

ABHISHEK BAWA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Pratap Singh Pathania, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular to the petitioner in case FIR No.38 dated 30.03.2024 (Annexure P-1) under Sections 307,148,149,506,120-B, of Indian Penal Code 1860, and Section 25 of Arms Act, 1959 later on added Section 201,212,216 IPC, registered at Police Station Sadar Pathankot, District Pathankot, in the interest of justice.

2. Brief facts of the present case unfolds as under:-

“Statement of Rahul Kuamr @ Shalu S/O Sh. Thakur Dass resident of kache Quarter, Police Station Division No.2 Pathankot, District Pathankot aged about 33 years M.No. 7837995005 Adhaar No7977602804664. Stated that I am resident of above mentioned address and I am doing shop at Common Service Centre Mohalla Kache Quarter Pathankot. That today on 30.03.2024 I along with my persons Vikrant Singh alias Vicky son of Bachan Lal resident of,

Rahul Kumar son of Mewa Ram resident of Khacche quarter, Kashmir Singh alias Billi resident of Partap Nagar had gone to Session Court, Fathankot to attend our case under section 307 IPC registered against us and after appearing in court, we came to the shop of Bashi and having tea and snacks at Sarana along with our other friends, I, Vikrant Singh, Lakhwinder Singh alias Lucky son of Rattan Singh resident of New Barial, Jaswinder Singh alias Sethi son of Jeet Singh resident of New Barial PS Shahpur kandi were sitting in one table and adjacent to us, in a separate table, Rakesh Kumar son of Hans Raj resident of Jaswal and Kumar son of Surinder Kumar resident of Lahdi Bavian were sitting are having snacks separately. It was about 12 in the noon, in the meantime Vishal Chaudhary alias Ishu resident of Uchi pulli Nathu Nagar PS Division no 2 armed with pistol, Gulshan resident of Kachhe quarter PS Division no.2 armed with pistol, Gopi resident of Daulatpur armed with pistol, Prince alias Dodi resident of Uchi gulli Nathu Nagar armed with pistol, Abhishek Bawa resident of Bawa Mohalla Pathankot armed with pistol Chandan son of Bau Ram resident of Kache quarter Pathankot armed with Datar, Rinku resident of Uchi Pulli Nathu Nagar Pathankot armed with Datar, Rishu Chaudhary alias Bamb son of Ashok resident of Uchi Pulli Pathankot armed with Iron Rod, Varun alias Vanu resident of Mukerian mohala armed with datar Anshu Chaudhary resident of Uchi Pulli Pathankot armed with datar along with 9-10 unknown persons came there. They were all the members of Londi resident of Daulatpur Gang and they while coming, Gopi resident of Daulatpur raised lalkara to teach them a lesson for taken the quarrel and then Gopi resident of Daulatpur gave a fire shot from his pistol upon Vikrant Singh which hit on his right shoulder and then Vishal Chaudhary gave blow of his pistol spon Lakhwinder Singh alias Lucky which hit on his right flank then Gulshan gave pistol fire to me which hit Ajay Kumar son of Surinder Kumar resident of Lahdi Bavian who was sitting near to me, on his right side of stomach then Prince alias Dodi gave pistol fire to Vikrant Singh which hit on his left leg knee then Abhishek Bawa gave pistol fire to me with intention to kill me I suddenly took the shelter of counter constructed inside the shop and the fire cross over my head then Vishal and Gulshan gave fire shots from their pistol upon

us which crossed near to us and then Rinku gave datar blow to Jaswinder Singh which hit on the right side of his forehead. Then Chanchal give reverse blow of datar upon Jaswinder Singh which hit on his left hand thumb. Then Rishu Chaudhary gave iron blow upon Rakesh which hit on his left wrist and all the accused ran away along with their motorcycles and car and weapons from the spot, we have seen the entire occurrence, the motive of the occurrence is that Londi resident of Daultpur has made a gang and they all are his gang members and we have a fight with them few time ago and because of that enmity Londhi along with his persons caused attack upon us. Vikrant Singh and Lakhwinder Singh alias Lucky were got admitted in Amandeep hospital Pathankot by Rahul son of sewa Ram r/o Kachhe quarter Pathankot after making the arrangement of transport and Rakesh Kumar, Ajay Kumar were admitted in Randhawa Hospital where they are under treatment. I and my friend Billi resident of Partap Nagar Pathankot were coming to you for given the information.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the injuries on the person of the complainant have been attributed to the co-accused persons namely Vishal Choudhary @ Ishu, Gulshan and Prince @ Doddi but not to the present petitioner though he was carrying fire arm. He further contends that the petitioner is in custody since 08.04.2024 and after completion of the investigation, challan stands presented to Court on 01.07.2024, charges are yet to be framed and total 37 prosecution witnesses are yet to be examined, meaning thereby, the conclusion of the trial will take long time.

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 does not dispute the aforementioned fact. However, he seeks dismissal of the present petition on the grounds that the petitioner allegedly fired a shot from his pistol with the intent to kill the complainant, although the shot did not hit the him. He further contends that the petitioner is a habitual offender as he is involved in another case, though he was acquitted by the trial Court in that very case.

4. Analysis

Be that as it may, considering the fact that no specific injury has been attributed to the present petitioner; investigation is complete, wherein challan stands presented to Court on 01.07.2024, charges are yet to be framed and total 37 prosecution witnesses are yet to be examined, which is suffice for this Court to infer that the conclusion of trial shall take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve no purpose.

In addition to above, as per custody certificate, the petitioner has suffered incarceration for a period of 01 year and 12 days by now who is not involved in any other case whatsoever. Though the State may try to stress upon FIR bearing No.200 dated 21.12.2020, under Sections 376-D-A/506 IPC, Section 6 of POCSO Act, Police Station Division No.1, Pathankot but the said custody certificate would reveal that the petitioner stands acquitted by the Court of ASJ, Pathankot vide order dated 07.11.2024 and in that case he remained confined as under trial for 08 months and 19 days.

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.

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.

24.04.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No