



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3363-2023
DECIDED ON: 24.04.2025

PARVEEN @ PANGHAL

....APPELLANT

VERSUS

STATE OF HARYANA AND ORS.

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gautam Dutt, Advocate for the appellant.

Mr. B.S. Virk, Sr. DAG, Haryana.

Mr. Prashant Singh Chauhan, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The present appeal has been preferred against the impugned order dated 09.10.2023 and grant of concession of Regular Bail in Case FIR No. 0289 dated 04.11.2021 Under Section 120-B, 148, 149, 302, 201 IPC, Section 25 of Arms Act 1959 & (Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015) added lateron), registered at Police Station: City Kosli, District: Rewari.

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

"To the SHO, Police Station Kosli, District Rewari. Sir, Respectfully submits that I, Sushma Devi w/o Ashok Kumar am resident of Village Bhakli, Police Station Kosli, District Rewari and I do household chores. My son Yashdev alias Ishu and his friend Akshay alias Badshah s/o Anup, resident of Bhakli, both had gone to market Kosli for Diwali shopping in their CRETA car bearing No.HR-10-AE-5358. While returning home, when they sat in the car, then some 05

to 07 persons started blind firing. By putting both of them in the same vehicle, Kapil, Aman, Sunil alias DC Bhakli brought them at Pushpanjali Hospital, where doctors after checking, declared them dead. On 25.08.2021, Yashdev alias Ishu was attacked with volley of firing while, going home on the road in front of Bhupender's office but on that day, he got success in saving his life. Police inspected the spot, from where, an empty case, a pistol and live rounds were found and FIR No.219 was registered. On alleging names of persons in said FIR, police have arrested Himanshu s/o Virender alias Colonel and 03 others till now. When these people committed some other incident in Kosli then they were arrested. During this, Virender alias Colonel s/o Harish Chander, r/o Village Bhakli threatened that his son has gone to jail but before his coming out, he will get Yashdev alias Ishu killed. Bhakli's Fauji Jokhi, Parvez Dhaniya, Deepak Amboli, Daku Salhawas, Golu alias Sachin, r/o Ry. St. Kosli have formed a gang, whereas the main kingpins are Praveen Panghal and Virender alias Colonel, r/o Bhakli, who is a liquor businessman. A sister-in-law of Virender alias Colonel, r/o Bhakli is involved in all these activities. Yashdev alias Ishu was threatened by these people. He was threatened from jail as well. The deceased Yashdev belonged to Ahir caste and Akshay belonged to Dhanak caste. I suspect that both of them have been killed by said persons. Therefore, it is requested that strict action may kindly be taken against the persons who killed my son. Dated 04.11.2021. Father Ashok Kumar. Copy to: D.S.P. Kosli, SP Rewari. Complainant Sd/- Sushma Devi w/o Ashok Kumar, Mob No.8901732327.”

3. **Contentions**

On behalf of the appellant

Learned counsel for the appellant contends that the appellant was earlier lodged in Bhondsi Jail in case FIR No.266/2021, under Sections 148, 149, 342, 365, 377, 379-B, 386, 506, 120-B and 420 IPC and Section 25/54/59 of Arms Act, registered at Police Station Kosli, wherein he has made disclosure statement about his involvement in the present FIR and as

per the settled law a confessional statement made by accused cannot be read against him as the same would be in violation of Article 20(3) of the Constitution of India.

On behalf of the State/complainant

On the other hand, learned State counsel has produced the custody certificate of the appellant today in Court, which is taken on record. He along with learned counsel for the complainant seek dismissal of the instant petition on the ground that the appellant is a habitual offender as he is involved in multiple cases.

4. **Analysis**

Be that as it may, considering the custody period already undergone by the appellant i.e. 03 years, 02 months and 13 days and the facts that as per the settled law, the appellant's confessional statement in another FIR cannot be read against him in the instant FIR as the same would be in violation of Article 20(3) of the Constitution of India; investigation is complete, wherein challan stands presented to Court on 09.03.2023, charges have been framed on 03.05.2023 and out of total 40 prosecution witnesses only 05 witnesses have been examined so far, 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 appellant behind the bars for an indefinite period would serve 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 pendency of other cases and involvement of the appellant 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 concession of bail.

5. **RELIEF:**

In view of the discussions made hereinabove, the appellant 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
Whether reportable*

*Yes/No
Yes/No*