

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

SR. No.206

CRM-M-45589-2021

Date of Decision:11.10.2022

Kulwant Singh

...Petitioner

Versus

State of Punjab

..Respondents

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Mikhail Kad, Advocate,
for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab.

N.S. SHEKHAWAT, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial in FIR No.78 dated 25.04.2020 under Sections 302/34 IPC (later on Section 302 IPC deleted and converted into Sections 306/498-A-34 IPC) registered at Police Station Sadar Sangrur.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He further submits that the case was initially registered against the petitioner under Section 302 IPC, but later on, the said offence was converted into Sections 306/498-A/34 IPC. He next submits that from the allegations contained in the FIR, no offence under Sections 306/498-A IPC is made out against the petitioner. He has also produced certified copies of the statements of PW-1 Harjinder Singh and PW-6 Komalpreet Kaur, which are taken on record as Mark 'A' and Mark 'B', respectively. He submits that even from the statement of complainant Harjinder Singh (PW-1), no offence under Section 306 IPC is

made out against the petitioner. Apparently, he had not abetted the suicide of Rajni Kaur. He next submits that PW-6 Komalpreet Kaur had not fully supported the case of the prosecution and was declared as partially hostile and she had not levelled allegations against the petitioner, He further submits that the petitioner was arrested on 26.04.2020. He next submits that the charges have been framed in the present case. Out of total 22 witnesses, 08 have been examined and the conclusion of the trial may take long time and therefore, further custody of the petitioner would serve no meaningful purpose. He also relies upon an order dated 01.09.2021 passed by this Court in CRM-M-20321-2021, whereby co-accused namely Hari Singh has been granted the concession of regular bail.

On the other hand, learned counsel for the State has vehemently opposed the bail petition on the ground that there are serious and specific allegations against the petitioner. He further contends that the petitioner may influence the witnesses and he may not be released till the examination of the witnesses before the learned trial Court.

I have heard the learned counsel for the parties and considered the rival contentions made by them

The Hon'ble Supreme Court in **Sanjay Chandra Vs. CBI, 2011(4) RCR (CrI) 898** held as follows:-

“14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

The courts owe more than verbal respect to the principle that

punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test.

In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

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26) When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should

be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

This Court, in the case of State of Kerala Vs. Raneef (2011) 1 SCC 784, has stated :-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

In the instant case, the petitioner is in custody since 25.04.2020; investigation is complete in all respects and the challan has already been presented. The prosecution has failed to show that the accused/petitioner is in a position to influence the witnesses or may abscond from the process of law and thus, his further custody would serve no

meaningful purpose. Co-accused Hari Singh has also been granted the concession of regular bail by this Court vide order dated 01.09.2022.

Taking into consideration the totality of the facts and circumstances and without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial court/Duty Magistrate/Chief Judicial Magistrate.

However, it is made clear that the above observations have been made only for the limited purpose of deciding the present regular bail petition and the same would not be construed to be an expression of opinion on the merits of the case.

11.10.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO