

2023:PHHC:105303

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.218

CRM-M-34205-2023 (O&M)

Date of decision:09.08.2023

Swaran Singh @ Sawran Singh @ Vikram

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Ms. Tanu Bedi, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S. SHEKHAWAT, J.

1. Petitioner prays for grant of bail pending trial in FIR No.1045 dated 17.12.2022 registered under Sections 3 and 4 of Explosive Substances Act, 1908; 15 of the Petroleum & Minerals Pipelines (Acquisition of Right of User in land) Act, 1962; Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984 and Sections 285, 379, 120-B, 201, 411, 420, 427, 473, 467, 468 and 471 IPC at Police Station, Shahbad, District Kurukshetra.

2. As per the case of the prosecution, the FIR in the present case was registered on the basis of the complaint moved by Assistant Manager, IOCL, NRPL, Ambala to the police. As per the complainant, the theft of petroleum products of Indian Oil Corporation Limited had taken place from the northern area pipeline from Ambala-Mathura-Jalandhar Pipeline of Chainage No.202.200 KM. It was alleged that an underground pipeline of

IOCL is going from Kurukshetra-Ambala-Jalandhar through which

petroleum products flow under high pressure. This pipeline originates at a depth of 1.5 meter to 2.0 meter from Jageer Vihar Colony of Police Station Shahabad. At about 1.40 A.M. to 2.50 a.m. on 14.12.2022, the information regarding the pressure drop was received in IOCL, Ambala Control Room. Further, information about the pressure drop from 7.00 p.m. on 14.12.2022 to 7.00 am on 15.12.2022 was received in the IOCL, Ambala Control Room. After that, DCVG survey was done on the pipeline and as per the survey report, excavation at IOCL, MJPL chainage 202.200 km was going to house adjacent to the pipeline area and through valve fitting, unknown persons had stolen 3000 litres of diesel from 1.40 am to 2.50 am on 14.12.2022 and 10,000 litres from 7.00 p.m. on 14.12.2022 to 7.00 am on 15.12.2022. Even this incident could turn into a major mishap and it was requested that necessary action must be taken against those unknown persons and on the basis of the said, FIR was registered in the present case.

3. Learned counsel for the petitioner submits that the petitioner had been falsely involved in the present case only on the basis of suspicion and the petitioner was not at all involved in the alleged crime. As per the learned counsel, the petitioner was not named in the FIR and the evidence collected against him was highly dubious and unreliable. Learned counsel further contends that the manner of occurrence as claimed by the complainant and the prosecution is yet to be proved and it was a simpliciter case of theft of diesel, which could not be solved by authorities and therefore, under pressure, they have tried to involve the persons already facing trial in the area for similar offence. Learned counsel further contends that to involve the petitioner in the present case, the documents of rent deed, agreement to sell, agreement to sell of plot, agreement to sell of tractor,

agreement to sell of a car were fabricated by the police, however, none of these documents have been signed by the present petitioner. Still further, Ravdeep Kaur was not even wife of Swaran Singh, who is shown to be his signatory wrongly. In fact, as per the Aadhar Card (Annexure P-3), the name of the wife of the petitioner is Hardeep Kaur. Still further, the petitioner was arrested in the present case after 10 days of registration of the FIR, without any evidence and the recovery of *kassi* and *khurpa* and demarcation of various shops and plots was not strong enough evidence to connect the petitioner with the commission of crime. Learned counsel further contends that at the most, from the contents of the complaint, only an offence under Section 379 IPC is made out and the provisions of Section 3 and 4 of the Explosive Substances Act, Section 15 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the land) Act, 1962, Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 have been added wrongly, just to make the offence as grave as possible. Learned counsel further contends that Section 3 of the Explosive Substance Act requires the actual causing of explosion; injury may or may not happen. However, in the present case, no such explosion had ever taken place as per the story of the prosecution itself. Still further, Section 4 of the Explosive Substance Act can be invoked when there is an intent to cause explosion with intent to endanger life and property; actual explosion being immaterial. In the present case, as per the case of the prosecution itself, the intention of the accused was to commit theft and the intention to cause explosion to endanger life and property was completely missing. Thus, the ingredients of the offence under Sections 3 and 4 of Explosive Substance Act were not made out from the case of the prosecution itself.

4. She further contends that the petitioner has been wrongly charged under Sections 3 and 4 of the Explosive Substance Act by the prosecution. She further contends that even the powers of this Court are protected even to grant bail under Section 15(4) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in the Land) Act to grant bail. Learned counsel further contends that in the present case, the investigation has been completed and the prosecution has cited 60 witnesses. However, in the present case, even the charges have not yet been framed and the trial Court may take quite a long time to conclude the trial. Still further, the petitioner was declared as a proclaimed offender in another FIR No.547 dated 15.11.2015, P.S. Sadar Thanesar, however, the petitioner has been acquitted to bail in the main case as well as the case under Section 174-A IPC and the petitioner is attending the trial regularly. Apart from that, the learned trial Court rejected the bail only on the ground that the allegations were serious in nature and had resulted into huge loss to the government exchequer. However, the documentary evidence, which was fabricated by the prosecution, is already in possession of the investigating agency and the further custody of the petitioner will serve no meaningful purpose. She further contends that co-accused Charanjit Singh and Sompal have already been granted the concession of bail by the Court of learned Additional Sessions Judge, Kurukshetra. Learned counsel further contends that the petitioner is facing prosecution in other cases as well, however, he has been either discharged, acquitted or bailed out in all these cases. However, in the present case, no offence, as alleged is made out against the present petitioner.

5. On the other hand, learned State counsel contends that even though the petitioner has not been named in the present FIR, but during the course of investigation, it stood established that the petitioner was actively involved in the commission of the crime and sufficient evidence had been collected against him. She further contends that seven more criminal cases are also found registered against the present petitioner and he is habitual of committing the same nature of crimes again. Apart from that, in case, he is ordered to be released, he may create hindrance to the arrest of the remaining accused and may also threaten the prosecution witnesses or may absconding itself from the learned trial Court. However, it is not in dispute that in most of the cases, the petitioner is either on bail or acquitted.

6. I have learned counsel for the parties and perused the record.

7. It has been held by the Hon'ble Supreme Court of India in the matter of ***Sanjay Chandra VS. CBI, 2011(4) R.C.R.(Criminal) 898***, 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 unconvicted 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 unconvicted 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.”

8. Hon'ble the Supreme Court in ***Gudikanti Narasimhulu and others v. Public Prosecutor, AIR 1978 SC 429*** has held as under:-

"Bail or Jail"- at the pre-trial or post-conviction stage - largely hinged on judicial discretion. The learned Judge held that personal liberty was too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. It was further held that deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. The learned Judge quoted Lord Russel who had said that bail was not to be withheld as a punishment and that the requirements as to bail were merely to secure the attendance of the prisoner at trial. According to V.R. Krishna Iyer, J., the principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment. After holding that it makes sense to assume that a man on bail has a better chance to prepare and present his case than one remanded in custody the learned Judge observed that if public justice is to be promoted mechanical detention should be demoted.:

9. In ***Gurbaksh Singh Sibbia etc v. The State of Punjab, AIR 1980 SC 1632***, Hon'ble the Supreme Court has observed as under:-

"Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back as in 1924 it was held by the High Court of

Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476, that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the Allahabad High Court in K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504, that Section 498 of the Old Code which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. The Supreme Court referred also the decision of the Allahabad High Court in Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356, wherein it was held that the principle to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous

to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows : "It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

10. It is not in dispute that the petitioner was arrested in the present case on 30.12.2022 and the charges are yet to be framed. The prosecution has relied upon the statements of 60 witnesses, however, as per the State counsel also, apparently no witness has been examined so far and the trial court may take considerable time in concluding the trial against the petitioner and the co-accused. Apart from that, investigation also against certain accused is yet to be completed. Thus, when the trial Court proceedings are at nascent stage, further incarceration of the present petitioner would be violative of his right to speedy trial, as enshrined in Article 21 of the Constitution of India.

11. This Court in CWP No.24263 of 2023 (**Naushad Vs State of Haryana**), decided on 13.07.2023 held as under:-

"The law is well settled that each case for bail of an accused has to be considered on the strength of merits of the said case. Even though, the criminal antecedents of an accused may be one of important considerations, while adjudicating a petition on merits for grant of bail. However, merely because of the fact that the petitioner is involved in some other cases cannot be the sole ground to confine the petitioner in jail in perpetuity. The power to adjudicate upon the liberties of an individual, while considering the bail application, cannot be

used as a means of inflicting the sentence on an accused. The gravity of the evidence, allegations, nature of incriminating evidence collected during the course of investigation by the police, chances of influencing the witnesses or tampering with the evidence are primarily the considerations with the Court, which decide the bail application. Apart from that, the Court has to look into the period of custody and the stage of the trial as one of the prime considerations. However, the bail to a petitioner in a particular case cannot be denied solely on the ground that several other cases are pending against him, even though, the petitioner has been able to make out a case for grant of bail in the case in hand.

12. The Hon'ble Supreme Court in the matter of ***Prabhakar Tewari Vs. State of U.P., and another 2020(1) R.C.R. (Criminal) 831*** held that the pendency of several criminal cases against the accused cannot be the basis to refuse the prayer of bail. Similar observations have been made by the Hon'ble Supreme Court in the matter of ***Maulana Mohd. Amir Rashadi Vs. State of U.P., and another 2012(1) R.C.R. (Criminal) 586.***

13. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

14. Needless to say that above observations are made only for the limited purpose of deciding the bail application and may not be construed as an expression of opinion on the merits of the case.

09.08.2023
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(N.S. SHEKHAWAT)
JUDGE

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