

2023:PHHC:088593

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

207

CRM M-41011 of 2022

Date of Decision: July 14, 2023

Raman

...Petitioner

Vs.

State of Haryana

...Respondent

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

Present : Mr. Aman Pal, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has moved the present petition under Section 439 Cr.P.C. with a prayer to grant the concession of regular bail to him in case FIR No. 37 dated 08.01.2020 under Sections 201, 364-A, 34 and 302 of IPC registered at Police Station Panipat City, District Panipat (Annexure P-1)

2. The FIR in the present case was registered on the basis of statement made by Yogesh, father of the deceased. As per the complainant, at about 07.00 p.m., on 07.01.2020 his son Kunal had gone out of his house with his friends to play. At about 09.00 p.m., they called on the mobile number of Kunal but his phone was switched off. They personally searched for him, but could not find him anywhere. He expressed doubt that his son Kunal had been kidnaped and lodged the present FIR on 08.01.2020.

3. During the course of investigation, he also got his supplementary statement recorded on 08.01.2020 itself that at about midnight to the effect that he had received a call on his mobile number from the mobile phone of his son Kunal. The call was made by some other person and not by his son Kunal. The said person was demanding a ransom of an amount of Rs. 5 lacs for releasing his son Kunal and he got scared. He told his family members and relatives regarding the demand of ransom and recording was heard by the family members of the complainant. The voice of the caller resembled with the voice of Raman son of Parveen, the petitioner/friend of Sahil @ Goli.

4. Learned counsel for the petitioner submits that he is a young boy aged about 24 years and is in custody since 08.01.2020. He further contends that the petitioner was apprehended only on the basis of suspicion and no recovery was effected from the present petitioner. He was picked from his home by the police and the false case was planted on him. He further contends that the material witnesses have already been examined and he is in custody for the last more than 03 years and 06 months. Thus, his custody would serve no meaningful purpose. He further contends that the similarly placed co-accused Kashish has already been granted the concession of bail by this Court and the present petitioner is also at par with him.

5. On the other hand, learned State counsel has vehemently opposed the prayer made by the present petitioner and submitted that

sufficient evidence has been found against the present petitioner. He was one of the main accused, who committed the murder of Kunal and had demanded ransom from his family. Learned State counsel has further submitted that there are total 19 witnesses and 14 witnesses have already been examined. Thus, the trial is at fag end and the petitioner may not be released on bail. Learned State counsel has further submitted that even the FSL reports Annexures R-1 and R-2 have been received and the voice of the petitioner has matched with the CD taken into possession by the police during the course of investigation. Still further, the present petitioner may influence the prosecution witnesses, in case, the petitioner is released on bail.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

5. No doubt, during the course of investigation, the police had recovered the CD, which contained the voice of the caller, who had demanded ransom and the voice in the CD has matched with the voice of the petitioner. However, this Court cannot be oblivious of the fact that the petitioner is in custody since 08.01.2020, i.e. for more than 03 years and 06 months. While granting the concession of bail, a detailed examination of the evidence and the elaborate documentation of the merits of the case need not be undertaken. Still further, if a person is detained in custody for indefinite period, it is violative of Article 21 of the Constitution of India. In the opinion of this Court, the trial in the present case has been unreasonably delayed. The

prosecution had relied upon 19 witnesses and even after more than 03 years and 06 months only 14 witnesses have been examined by the prosecution. Further, it is not in dispute that all the material witnesses have already been examined and the present petitioner would not be in a position to tamper with the evidence or influence the witnesses, at this stage. The law is well settled that the object of bail is to secure the appearance of the accused facing trial by reasonable amount of bail. The object of bail is neither punitive nor preventive.

6. The Hon'ble Supreme Court has held in the matter of **Sanjay Chandra VS. C.B.I. 2011(4) RCR Criminal 898** as follows:-

*“18. **In Gurcharan Singh v. State (Delhi Admn.), (1978)1 SCC 118**, this Court took the view :*

"22. In other non-bailable cases the Court will exercise its judicial discretion in favour of granting bail subject to Sub-section (3) of Section 437 Criminal Procedure Code if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) Criminal Procedure Code and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has

not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

24. Section 439(1) Criminal Procedure Code of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Criminal Procedure Code against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) Criminal Procedure Code of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) Criminal Procedure Code of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering

with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

*19. In **Babu Singh v. State of U.P., (1978)1 SCC 579**, this Court opined :*

"8. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden on the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. As Chamber Judge in this summit Court I had to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So it is desirable that the subject is disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right. ..."

16. Thus the legal principle and practice validate the Court considering the likelihood of the applicant

interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

17. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice to the individual involved and society affected. 18. We must weigh the contrary factors to answer the test of reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, "community roots" of the applicant are

stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

20. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the Court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so of innocence has been recorded by one Court. It may be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record

and police prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal."

7. In view of the principles laid down by the Hon'ble Supreme Court in Sanjay Chandra's case (supra) and the aforesaid discussion, 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.

July 14, 2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No