

CRM-M-52965-2021
Date of Decision:24.08.2023

Vs.

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Coram : Hon'ble Mr. Justice N.S.Shekhawat

Mr.Mukesh Kumar Sharma, Advocate
for the complainant.

N.S.Shekhawat J.

1. This order shall dispose off three petitions i.e. **CRM-M-52965-2021** titled as **Parwinder Singh Vs. State of Punjab**, **CRM-M-50458-2022** titled as **Gurvinder Singh Vs. State of Punjab** and **CRM-M-28596-2023** titled as **Sukhwinder Singh Vs. State of Punjab**, whereby the petitioners have

prayed for grant of regular bail in a case arising out of FIR No.218 dated 30.06.2019, under Sections 302, 341, 148, 149,506 and 34 IPC, Police Station Zirakpur, District SAS Nagar, Mohali .

2. The FIR in the present case was got registered by Pawan Saroha, complainant, who stated that at about 03:00 PM on 30.06.2019, he along with his friends Kuldeep Singh and Nipun Jain were returning back to Zirakpur and the complainant was driving the car, whereas Kuldeep Singh was sitting with him on the seat of the co-passenger. When they reached near Village Sanolia link road, Village Ghazipur Sainiya, a car bearing registration No.PB-65-AK-9297, mark Ford Figo came from behind and driver of the said car brought his car parallel to their car and started cursing them. On this, Kuldeep Singh objected and the persons travelling in Ford Figo car brought their car in front of car of the complainant and stopped them. They came out of their car and three other cars were also with them. They opened the door of Kuldeep Singh and started beating Kuldeep Singh @ Rommy with fist and kicks on the seat of the car and started pulling him out of the car. The complainant and his friend Nipun Jain requested them not to beat him, but they did not stop and also slapped the complainant and Nipun Jain. Kuldeep Singh fainted on a seat and the abovesaid persons left the spot raising *lalkaras*. All the abovesaid persons seemed to be drunk. The complainant and Nipun Jain brought Kuldeep Singh in an unconscious condition to M.Care Hospital, VIP Road, Zirakpur for treatment. The doctor checked him and declared him brought dead. Thus, the FIR was registered in the present case by levelling allegations against certain unknown persons and a request was made to take action against them. With these allegations, the FIR was initially registered in the present case.

3. Learned counsel for the petitioners submit that apparently it was a case of road rage, where the complainant did not name any accused and the FIR was initially registered against unknown persons. In the FIR also, the complainant had not mentioned any physical descriptions of any of the assailants and the petitioners were falsely involved only on the basis of suspicion. Learned counsel further submitted that in the FIR also, it was clear that no specific allegation was levelled against any of the accused. Even the Investigating Agency, only on the basis of the car number ordered the arrest of the petitioners, who had no concern with the alleged crime. Learned counsel further submitted that in the present case after the arrest of the petitioners, no identification parade was held nor any identification particulars were disclosed to the police by any witness. Even the occurrence had taken place at 03:00 PM on 30.06.2019 and there is no independent corroboration of the prosecution version in the present case. Moreover, the Ford Figo car mentioned in the FIR was not owned by the petitioners and no specific allegations were levelled against any of the petitioners. Even, it is the admitted case of the prosecution that none of the accused was carrying any weapon and the injuries were caused only with fist and kicks. Thus, it is apparent that there was no intention to cause death of the injured and the occurrence had taken place at the spur of the moment. Apart from that, it is also admitted case of the parties, that the accused were not known to the complainant and no motive has been alleged against the petitioners to commit the crime. Even from a perusal of the challan, it was evident that the police could not find any evidence, which could prove the complicity of the petitioners in the commission of the alleged crime. Learned counsel further submitted that in the present case, the challan was

presented on 15.08.2019 and the charges were ordered to be framed on 16.10.2019. Thereafter, the prosecution has only been able to examine three witnesses out of total 14 witnesses. Apart from that, the prosecution has also moved an application under Section 319 Cr.PC for summoning of the co-accused. Moreover, the petitioners were arrested in the present case on 01.07.2019 and are in custody for the last more than 4 years and one month. Since the petitioners on the one hand, are in such a long custody, whereas on the other hand, the prosecution has trying to delay the trial and have also moved an application under Section 319 Cr.PC, just to prolong the trial proceedings before the Trial Court.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioners on the ground that three more FIRs have been registered against Parwinder Singh, accused, however, all the FIRs were registered under the provisions of Section 52-A of the Prisons Act, while Parwinder Singh was confined in jail. Similarly, one more FIR under Section 52-A of the Prisons Act, was registered against Gurvinder Singh, while he was confined in jail. However, the learned State counsel admits that the petitioners are the first offenders and prior to the registration of the present case, they never indulged in any criminal activity.

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

6. At this stage, it is observed that the object of the bail is to secure the presence of the accused at the trial only. It is also observed that the object of bail is neither punitive nor preventive and deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person

will stand his trial when called upon. Hon'ble the Supreme Court has observed in catena of judgments that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he may influence the witnesses. It is appropriate to say that pre-conviction detention should not be resorted to, except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

7. 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.

8. In **Gurbaksh Singh Sibbia etc Vs 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 Vs. 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 Vs. 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 Vs. 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."

9. The legal position emerging from the above discussion can be summarised as follows :

“(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial 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. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) 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. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to

look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. 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.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437 (1), there is no ban imposed under Section 439(1) 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. However while considering an application for Bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle

governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends 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.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are (i) the likelihood of the accused fleeing from justice, and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437

with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might 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.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other nonbailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.”

10. Still further, the Hon'ble Supreme Court, while dealing with the scope of speedy trial and emphasizing that the speedy trial is one of the most important facets of the fundamental rights to life and liberty enshrined in Article 21, held in the matter of **Kartar Singh Vs. State of Punjab and connect case, 1994(2) RCR 169** as follows:

Speedy Trial

89. The right to a speedy trial is a derivation from a provision of Magna Carta. This principle has also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America which reads, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.....

90. It may be pointed out, in this connection, that there is a Federal Act of 1974 called 'Speedy Trial Act' establishing a set of time-limits for carrying out the major events, e.g., information, indictment, arraignment, in the prosecution of criminal cases. See Black's Law Dictionary, (Sixth Edition) p. 1400.

91. The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration, to minimise anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there is a societal interest in providing a speedy trial. This right has been actuated in the recent past and the courts have laid

down a series of decisions opening up new vistas of fundamental rights. In fact, lot of cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment or charge.

92. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

93. This Court in Hussainara Khatoon (1) v. Home Secretary, State of Bihar, 1980 (1) SCC 81 at P. 89 while dealing with Article 21 of the Constitution of India has observed thus:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequent if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and

convicting him after such trial would constitute violation of his fundamental right under Article 21."

94. See also (1) *Sunil Batra v. Delhi Administration*, 1979 (1) SCR 392; (2) *Hussainara Khatoon (1) v. Home Secretary, State of Bihar*, 1979 (3) SCR 169; (3) *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*, 1979 (3) SCR 532; (4) *Hussainara Khatoon and others v. Home Secretary, State of Bihar, Govt. of Bihar, Patna* 1979 (3) SCR 1276; (5) *Kadra Pahadia v. State of Bihar*, 1983 (2) SCC 104; (6) *T. V. Vatheeswaran v. State of T.N.*, 1983(2) SCR 348; and (7) *Abdul Rehman Antulay v. R. S. Nayak*, 1992 (1) SCC 225.

11. No doubt in the present case, the allegations levelled against the present petitioners point towards the seriousness of the charge against all the petitioners. However, the gravity of the offence is not only consideration, which should be kept in mind by the Court, while considering the regular bail petitions filed by the accused. Apart from gravity of the offence, the Court is bound to consider other relevant factors also viz. capacity of the accused to influence the witnesses or tamper with the prosecution evidence; chances of fleeing from the process of justice; past conduct and behaviour of the accused; social background of the accused; period of custody as an undertrial etc. In the present case, FIR was initially registered against the unknown persons and during the course of investigation, the petitioners were arrested in the present case on 01.07.2019 and have been in custody for last four years and one month. Further, it is apparent that the testimonies of the material witnesses i.e Pawan Saroha and Nipun Jain have already been recorded by the Trial Court. Apart from that, only 03 witnesses out of total 14 witnesses have been examined so far. Thus, further custody of the petitioners would not serve any meaningful purpose.

Apart from that, the learned State counsel has not placed on record any material to show that the petitioners are in a position to influence the witnesses of prosecution or there are chances of absconding from the process of justice. Even prior to the commission of the offence in the present case, the petitioners were not involved in any other criminal activity. Apart from that, this Court as well as the Hon'ble Supreme Court, in a series of judgments have held that "reasonably expeditious" proceedings in a criminal trial is an integral and essential part of the fundamental right to life and liberty.

12. Consequently, all the three petitions are allowed and the petitioners are ordered to be released on bail pending trial on their furnishing bail bonds and surety to the satisfaction of the concerned trial Court/ Duty Magistrate/Chief Judicial Magistrate subject to the following conditions:-

(i) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade them to disclose such facts to the Court or to any other authority.

(ii) The petitioners shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioners shall not absent themselves from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioners shall surrender their passports, if any, (if already not surrendered), and in case they are not holder of the same, they shall swear an affidavit to that effect.

(v) The petitioners shall also file his affidavit before the concerned

Court, mentioning their ordinary place of residence and number of mobile phone, which shall be used by them during the pendency of the trial. In case of change of place of residence/mobile number, they shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioners involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.

(vii) The concerned Court may insist on two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bails bonds and surety bonds of the petitioners.

(viii) The petitioners shall report every 1st Monday of English calender month before the concerned SHO till the conclusion of the trial and SHO shall mark their presence by making an entry in the Rojnamcha.

13. In case, the petitioners violates any of the conditions mentioned above, it shall be viewed seriously and the concession of bail granted to them shall be liable to be cancelled and the prosecution shall be at liberty to move an application in this regard.

24.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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