



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5446-2024
DECIDED ON: 09.08.2024

AMRITPAL SINGH @ ASHU
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lakshay Bector, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in FIR No. 151, dated 11.04.2023 (Annexure P-1), under Sections 323, 341, 506, 148, 149 IPC and (Section 308 IPC added later on), registered at Police Station Division No.7, District Ludhiana.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Statement of Mohit Mash S/o Tilak Mash R/o House no. 4095/4, Street no. 0, Mohalla Beant Pura, Chandigarh Road, P.S. Moti Nagar, Ludhiana aged about 19 years, M. no. 62837-64096. Stated that reside at above mentioned address alongwith my family. I have studied upto 8th class and I work at Vardhmam Factory,

Chandigarh Road, Ludhiana. On 9-4-2023 myself and my friend Vinay Kumar, riding a motor cycle had gone to nearby Deep Hospital, near Greenland School, LIG Road for eating momos. When at about 10.00 P.M. we were about to leave, then Diljot Singh S/o Randhir Singh R/o H. no. 157, LIG Flat P.S. Division no. 7, District Ludhiana armed with iron datar, Ashu Kumar armed with kirpan, Sonu alias chah patti armed with kirpan, and Sonu Zhungia and Shubham alias Dabba and Arjun Kumar armed with iron datar alongwith 10-12 unidentified persons encircled us and started abusing us and started giving exhortations. Diljot Singh hit me with backside of iron datar which hit me on my forehead, Ashu Kumar hit me with backside of kirpan on my head which fell on upper side of my left eye and I fell down unconscious, after this I was not able to know anything and these persons gave me beatings when I was lying down and also gave beatings to my friend Vinay Kumar. My friend Vinay Kumar raised an alarm and persons passing by came there. At this these persons ran away alongwith weapons giving threats to kill us. My friend Vinay Kumar made me conscious and tied cloth on my head and took me home and my father Tilak Mash took me and my friend Vinay Kumar to Civil Hospital for treatment. There Doctor after giving stitches to us and after recording MLR sent us home and on next day I got conducted MRI scanning of my head. Reason for grudge is that Shubham had an altercation with my friend Bunty. Because of that above mentioned persons have given beatings to me and my friend Vinay Kumar. Because of injury on my head I could not come to police station to report. Now alongwith my father was going to police station to report, you met us. On being confronted I can recognize Diljot Singh, Ashu Kumar, Sonu alias chah

patti, Shubham alias Dabba, Arjun Kumar, Sonu Zhungian and 10-12 unidentified persons. Appropriate legal action be taken against them. I have got recorded my statement with you, heard it, it is correct.”

3. **Contention:**

On behalf of the petitioner

Learned counsel for the petitioner contends that the complainant namely Mohit Masih has given an affidavit dated 19.12.2023 (Annexure P-2) to assert that the petitioner namely Amritpal Singh @ Ashu son of Satnam Singh, resident of H.No.1565, St.No.03, near Baba Deep Singh Gurudwara, Vishkarma Nagar, Tajpur Road, Ludhiana was not present at the time of the alleged occurrence and, therefore, he has no role whatsoever in the commissioning of the alleged offence.

On behalf of State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is involved in seven more cases, meaning thereby he is a habitual offender.

On behalf of the complainant

Mr. Saurav Kanojia, Advocate has put in appearance on behalf of the complainant who also does not dispute the execution of the said affidavit (Annexure P-2).

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year and 18 days for which the petitioner has suffered sufficient incarceration and the fact that the complainant namely Mohit Masih has given an affidavit

stating that the petitioner was not present at the time of the alleged occurrence, which in itself is sufficient for this Court to infer that there is a strong probability of earning acquittal on the basis of stand taken by the complainant before this Court, therefore, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period.

In the instant case, challan stands presented in Court on 18.12.2023, charges are yet to be framed and out of total 13 prosecution witnesses none have been examined yet, meaning thereby, the conclusion of the trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 petitioner 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. DECISION:

In view of the discussions made hereinabove, the petitioner is directed to be released on regular bail on his 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.

09.08.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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