



211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5460-2024

DATE OF DECISION: 06.08.2024

ASHU

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parveen Sharma, Advocate for the petitioner.
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in case FIR No. 88, dated 03.03.2023, under Section 302 IPC, 1860 (later Sections 201/120-B/34 IPC added) registered, P.S. at Bahalgarh, District Sonipat.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

'To, The SHO, Police Station Bahalgarh. Sir, It is submitted that I, Manoj son of Mahender Singh, am resident of Badoli and I do labour work. I am the only son of my father and I have three sisters. We all are married. In the night of 02.03.2023, my father Mahender Singh son of Chander, after having his dinner, at about 10:00 PM, had slept in the 'chabutra' constructed outside the house. The age of my father is about 65 years. I, today on 03.03.2023 at 06:00 AM, came downstairs for taking out milk and I started waking up my father but he did not wake up and then when I removed his 'rajai' (quilt) then I saw



that the white shirt worn by my father was filled with blood. Thereafter, when I saw his abdomen, after lifting the shirt, then the entire abdomen was filled with blood and towards left side of the abdomen, at four places, there were injury marks of some sharp weapon like knife, and there were injury marks upon the thumb of right hand and above it; and lot of blood had oozed out. Some unknown person, by giving knife blows to my father in his abdomen, have murdered him, due to nursing of some grudge. Legal action may kindly be taken against the said unknown person. Sd/- Manoj. Manoj son of Mahender resident of Badoli 98134-30712....."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He submits that the petitioner was initially not named in the FIR but was subsequently roped in the supplementary statement made by the complainant, therefore, the name of the petitioner was nominated as an accused in the FIR. It is the case set up by counsel for the petitioner that neither any injury has been attributed to the petitioner nor any overt act has been attributed to him. He submits that the petitioner has been in custody for last almost 1 year and 5 months and he is not involved in any other case. He further submits that investigation is complete as challan stands presented on 07.06.2023 and charges have been framed on 21.09.2023. He has further argued that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 25 Prosecution Witnesses, only two witnesses have been examined so far.

**On behalf of the State**

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and files the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year, 4 months and 22 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner caught hold of the deceased and the co-accused-Ajay gave the knife blow and that injury turned to be fatal and therefore, on that account, this petition liable to be dismissed.

4. Analysis

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 1 year, 4 months and 22 days, even as per the prosecution case the role attributed to him is that he caught hold the petitioner is not involved in any other case, meaning thereby he is not a habitual offender, the petitioner was named only on the basis of supplementary statement made after 10 days of the date of registration of the FIR by the complainant which create a serious doubt on the case of the prosecution and prima facie Section 302 has been attracted against the petitioner for which he has already undergone 1 year, 4 months and 22 days and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 07.06.2023 and charges have been framed on 21.09.2023, out of 25 prosecution witnesses, only two PWs have been



examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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.

5. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

06.08.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>