



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106+ 213

CRM-M-17977-2024 (O&M)

DATE OF DECISION: 31.07.2024

MALKIAT SINGH @ SONU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravi Malhotra, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-30250-2023

This application has been filed for placing on record copies of challan and statement as Annexures P-4 and P-5.

For the reasons recorded in the application, the same is allowed and copies of challan and statement as Annexures P-4 and P-5 are taken on record.

Main case

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.245 dated 28.11.2023, under Sections 379-B IPC, 1860 later on Sections 379/411/34 were added in the FIR, registered at Police Station Division No. 6, District Police Commissionerate Ludhiana.



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

‘Statement of Pardeep Kumar Son of Sh. Roop Lal, Resident of House Number 76, Street Number 06, Dashmesh Nagar, Doraha, District Ludhiana aged about 58 years Mobile Number 98140-06835. Stated that I am resident of above mentioned address and I am working as Manager at Urja Centre Petrol Pump, Near Veer Palace, Chandigarh Road, Jamalpur, Ludhiana. Today on 28.11.2023 I alongwith Malkiat Singh son of Tara Singh, resident of House Number 111, Street Number 04, Baba Jiwan Singh Nagar, Tajpur Road, Ludhiana who is doing the marketing work were present at the petrol pump. I received a cash amount of Rs.25,19,900/- of petrol pump from Shamsher Singh Cashier appointed at petrol pump and went to SBI Bank Branch, Dholewal (Near Gulzar Petrol Pump) for depositing the said amount by driving my swift car Number PB-10-DB-1250, when our above numbered car reached outside the SBI Branch, Dholewal (Near Gulzar Petrol Pump) at about 3:15 PM, then Malkiat Singh who is holding the bag containing the cash and accompanied me, stepped out the car with the bag containing the cash and I start parking my vehicle on the side, then I saw that one person who has weared a grey colour jacket and blue colour monkey cap came from the back side and all of sudden snatched the above mentioned bag containing the cash from Malkiat Singh and fled away from there. Malkiat Singh ran after him by raising the alarm of 'thief-thief and I also after immediately stepped out from the vehicle and ran behind him, but we could not able to apprehend them as snatcher sit on a motorcycle of his companion and fled away in a high speed on their motorcycle towards the Sherpur Chowk side. I also chased them in my swift car but as they were also on the high speed, so I could not apprehend them, thereafter I narrated the whole occurrence to Manjit Singh owner of the petrol pump on the telephone, who also reached at the spot and enquired, thereafter I



called the police on 100 number and after reaching the Police Station narrated whole of the incident to you. Statement got recorded, the necessary legal action be taken against above mentioned unknown persons riding on the motorcycle who committed the snatching. Statement has been got recorded to you, heard it is correct. Sd/- Pardeep Kumar (English) attested ASI Ranbir Singh Number 181/LUD Police Station Division Number 06 Ludhiana dated 28.11.2023. Police Proceedings: Today I ASI alongwith Havildar Surinder Singh Number 2210/LUD, PHG Varinder Parsad Number 16190 is present in the Police Station, then Pardeep Kumar son of Shri Roop Lal, resident of House Number 76, Street Number 06, Dashmesh Nagar, Doraha, District Ludhiana came present and got recorded his above mentioned statement, same has been recorded word by word and read over to him who after hearing the contents of his statement admitted the same as correct and appended his signature in english under the statement. Same has been attested by me ASI. From the statement commission of offence punishable under Sections 379-B IPC is made out therefore statement has been sent through PHG Varinder Parsad Number 16190 to the Munshi Police Station for registration of the case under above mentioned sections against the above mentioned accused. After registration of the case, case number be informed. Control Room be informed. I ASI alongwith accompanying employees and alongwith complainant of the case proceed towards the spot of occurrence. Sd/- ASI Ranbir Singh Number 181/LDH, Police Station Division Number 06, Ludhiana dated 28.11.2023 in the area of Police Station Division Number 06, Ludhiana at 5:50 PM. After receiving the above mentioned statement above mentioned case under the above mentioned sections against the above mentioned unknown persons has been registered. Original statement alongwith copy of FIR has been sent through coming PHG to ASI at the spot for further investigation. Control Room has been informed through wireless Completion Report Number 21 at 6:45 PM.'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case as there was no evidence to establish that there was any talk between the snatchers as well as the petitioner on 28.11.2023, therefore, the petitioner cannot be connected with the alleged incident and is in custody since 29.11.2023. He has further argued that the antecedents of the petitioner are clean. Though in present case alleged recovery of Rs. 35,000/- has been effected from the petitioner, but 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 13 Prosecution Witnesses, none has 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 has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for almost 8 months.

Learned State Counsel submits on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in this case challan stands presented on 25.01.2024 and charges stands framed on 30.03.2024.

4. Analysis

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 7 months and 28 days



similarly situated co-accused have already been granted concession of bail by this Court, 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 25.01.2024, charges stands framed on 30.03.2024, out of 13 prosecution witnesses, none has 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.

Reliance can be made 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 granted the concession of 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

31.07.2024
anuradha

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