



214

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20638-2024

DATE OF DECISION: 06.08.2024

JOBANPREET SINGH ALIAS JOBANJEET SINGH
...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sukhbir Maandi, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

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. 253, dated 14.11.2023, under Section 379-B, IPC, 1860 (later on added offence under Section 201, 411 and 34 IPC) registered at P.S. Maqboolpura, District Police Commissionerate Amritsar.

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

'Statement of Meenakshi Sharma wife of Gurwinder Kumar resident of House No. R/170, New Focal Point, Mehta Road, Amritsar, aged about 51 years, Mobile No. 83601-18361, stated that I am resident of above noted address and doing the job of Clerk at Khalsa Senior Secondary School, Mehta, Nawan Pind. I usually leave my house at about 8:30 AM and coming back at about 3:30 in evening from School to House. Today, as usually I go to School on my job and returned back to my home



on Bus. On main Road Mehta, time at about 4:00 PM, when I leaving the bus and going to my house on foot then at about 25-30 Gaj ahead, two clean shaven young man come on their Motorcycle and the young man who sitting behind the Motorcycle snatched my purse and run away on the road which turned ahead. In the purse, there is Rs. 45,000/- of school fee, my mobile phone, colour black, mark Samsung No. 98153- 68831, my Aadhaar Card, my daughter's Aadhaar Card, Four ATMs Card in which two Cards of PNB and HDFC Nawan Pind and the keys of my house and School and passport photograph of my daughter Akansha and also containing the card of Best Prize Mall in my purse. I can identify the said young persons if they presented before me. In this regard, I and my family searched themselves now, I along with my husband coming before you for giving intimation, you met us, legal action be taken. Sd/- Meenakshi Sharma, Attested by Dilraj Singh SI, Police Station Maqboolpura, Amritsar, 14.11.2023. Police proceedings.'

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 his name was connected with the alleged incident only after three months of the commissioning of the alleged offence on the basis of supplementary statement made by the complainant, therefore, the case of the prosecution is doubtful. He submits that the petitioner has been in custody for last almost 6 months and is not involved in any other case of similar nature. He submits that investigation is complete as challan stands presented on 16.04.2024 and charges have been framed on 28.05.2024. 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 15 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 5 months and 17 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner at a young age has succeeded in snatching the purse containing Rs. 45000/- and one mobile phone Samsung No. 98153-68831, Aadhar Card, ATM Cards of Punjab National Bank and HDFC Bank etc, therefore, if he is released on bail he may indulge in similar acts again. In support of his argument, he submits that the petitioner is involved in one more FIR i.e FIR No. 5 dated 05.02.2024 under Sections 109/151 Cr.P.C. registered at P.S. Maqboopura.

4. Analysis

Be that as it may, from the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 5 months and 17 days, as regards the argument raised by counsel for the State that a young boy has snatched the purse, the Court see this fact from another angle that though the petitioner is involved in another case registered under Sections 109/151 Cr.P.C but in that case he is on bail after undergoing custody for a period of 17 days as is evident from the custody certificate, which is sufficient for this Court to infer that he is



not a habitual offender. Furthermore, the petitioner was nominated as an accused after three months of the incident, 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 16.04.2024 and charges have been framed on 28.05.2024, out of 15 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 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.

Further, as far as the pendency of other case and involvement of the petitioner in other case 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 the concession of bail.

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/her 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>