



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

220 CRM-M-21242-2024 (O&M)
DATE OF DECISION: 03.12.2024

SAGAR ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saurabh Dalal, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail for the petitioner in FIR No.307 dated 07.09.2023, under Sections 120B, 148, 302 and 201 read with Section 149 IPC and Section 25 of Arms Act registered at Police Station Sadar, Rohtak.

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

'The Police Post Incharge, Titoli (Rohtak). Subject: regarding murder of Vikas s/o Pappu resident of Nandgarh, Julana, Jind. Sir, I request that I am Pappu son Harphool, resident of village Nandgarh, Tehsil Julana, district Jind. I work as labour to support my family. I have four children, two boys and two girls. Both my daughters are married. My elder son Vikas, who is about 28 years old, used to drive a truck, who had come to his home village Nandgarh on the festival of Raksha Bandhan.



Yesterday on 06.09.2023 at around 6:30 pm, I and my son were present at home with Vikas and other family members that Shomma son Kartar alias Tinda and Shoma's brother Sonu had called my son Vikas from home and taken him from home. Today on 07.09.2023, I received information that the body of my boy Vikas has been found in the fields near drain no. 8 near Titoli Sundarpur. I and my family members reached the fields near Bridge of village Sundarpur and Titoli of Drain No. 8 where the body of my son Vikas was found in the fields along the track of Drain No. 8. Which I am sure is that my son Vikas was murdered by the above two brothers Shomma and Sonu of our village and their aunt who PWS belongs to the village Kathura district Sonipat. Whose name I don't know. Together they killed my boy Vikas by shooting him in the chest on the right side and hitting him in the head with sharp weapons and threw the corpse in the fields along the track of drain no. 8 with the intention of mutilating it. Legal action should be taken against these three. Sd/- Pappu Applicant Pappu S/o Shri Harphool Village Nandgarh, Tehsil Julana District (Jind) Mob- 8814853400.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and he was not named in the FIR. He submits that the petitioner has been entangled only on the basis of disclosure statement suffered by co-accused Sombir @ Shona and the allegation against the petitioner is that he was a part of the conspiracy hatched for committing the murder of Vikas. He further submits that the petitioner has no role in the present case and the petitioner was not even known to him, more so, the petitioner has clean antecedents and he is a poor labourer earning



his bread on daily basis. He has argued that the antecedents of the petitioner are clean.

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 1 year, 2 months and 20 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that there are serious allegations levelled that the petitioner along with other co-accused hatched a conspiracy and committed murder of Vikas but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 2 months and 20 months, he was named in the FIR only on the basis of disclosure statement of the co-accused, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 28.11.2023, charges are yet not framed and total 21 prosecution witnesses are cited which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore,



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 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.

5. **Decision:**

In view of the aforesaid 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.

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

03.12.2024
anuradha

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