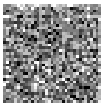


208-2

2024:PHHC:130353



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2018-2024
DECIDED ON: 01.10.2024

GURBHEJ SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Veneet Sharma, Advocate
for the appellant.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The present appeal has been preferred against the order dated 07.05.2024 whereby the regular bail filed by the appellant has been dismissed by the trial Court.

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

“Statement of Joga Singh son of Iqbal Singh resident of Dhotiwind, P.S. Gharinda, District Amritsar, aged about 32 years, Phone No. 78148 21735. It is stated that I am resident of the above address and do the work of labour. We are two brothers and my parents are old and the age of my brother is about 26 years who is younger to me and also does the work of labour. Today on 11.09.2023 at

about 10.00 a.m. in the morning my brother Gauri Singh had gone to Attari to get household articles. Afterwards at about 11.00 a.m. in the morning somebody told me that allegations are being leveled against my brother Gauri Singh by Bachittar Singh son of Kunan Singh and his son Himmat Singh son of Bachittar Singh residents of village Dhotiwind that he has stolen wheat from their house number of times. Today, my brother Gauri Singh was coming back from Attari to village Dhotiwind and when my brother was about to come from Attari then Bachittar Singh son of Kunan Singh, Himmat Singh son of Bachittar Singh, Satnam Singh son of Heera Singh, Ram Singh son of Heera Singh and Sukhwinder Singh alias Sata son of Lakhbir Singh residents of Dhotiwind picked him up and took him to the house of Bachittar Singh and all of them gave a lot of beatings to my brother due to which he received hidden injuries. When I came to know then I and Gursahib Singh son of Gurbax Singh resident of Dhotiwind who is my brother in the brotherhood, both of us at about 2/2.30 p.m. in the evening reached the Behak of Bachittar Singh and saw that Bachittar Singh son of Kunan Singh, Himmat Singh son of Bachittar Singh, Satnam Singh son of Heera Singh, Ram Singh son of Heera Singh and Sukhwinder Singh alias Sata son of Lakhbir Singh residents of Dhotiwind were giving beatings to my brother and were also giving him kick blows and my brother received injury at some delicate part due to which he died. Both of us raised noise killed-killed and all of them ran away from the spot. The reason for the grudge is that all of them were having suspicion regarding theft by my brother Gauri Singh. I left Gursahib Singh near the body of my brother Gauri Singh and was coming to give you information that you met me at Dhotiwind Bus Stand. Legal action be taken. Sd/- Joga

*Singh, verified: Sd/- Arun Kumar, S.I. P.S. Gharinda.
Dated 11.9.2023."*

3. **Contentions**

On behalf of the appellant

Learned counsel for the appellant contends that as per the narrated version in the FIR, the appellant has been attributed the role of giving danda blows to the brother of the complainant, on whose statement the appellant has been nominated as an accused in the present FIR. He further contends that the said story of the prosecution has not been supported by PW-1 Joga Singh while appearing in the witness-box, as has been referred by Mr. Vineet Sharma, learned Advocate for the appellant while putting on record statement of PW-1 as Annexure A-2 in which he was declared hostile and public prosecutor for the State was allowed to cross-examine and confront him with the said statement. During cross-examination as well, the appellant has denied of giving any such statement to the effect that the appellant had given any hit blow or beating in any manner whatsoever, as has been averred by learned counsel for the appellant.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the appellant today in Court, which is taken on record. He seeks dismissal of the instant appeal on the ground that the appellant along with other co-accused persons have given beatings to the brother of the complainant, which caused several injuries to him and thereafter he succumbed to the injuries.

4. Analysis

Be that as it may, considering the custody period i.e. 08 months and 03 days for which the appellant has suffered incarceration; the appellant is not involved in any other case, meaning thereby he is not a habitual offender, as is evident from custody certificate produced today in Court; the brother of the deceased, namely, Joga Singh has turned hostile, on whose statement the present FIR has been registered in addition to the fact that investigation is complete, challan stands presented to Court on 05.12.2023, charges have been framed on 14.03.2024 and out of total 22 prosecution witnesses, only 03 witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the appellant 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.

5. **DECISION:**

In view of the discussions made hereinabove, the appellant is hereby 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 appeal 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 trial.

01.10.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No