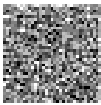


207

2024:PHHC:134456



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2347-2024
DECIDED ON: 15.10.2024

MOHIT

....APPELLANT

VERSUS

STATE OF HARYANA AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Prateek Rathee, Advocate
for the appellant.

Mr. Chetan Sharma, DAG, Haryana.

Mr. Asutosh Kumar Singh, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The instant appeal has been preferred against the order dated 27.05.2024 passed by Additional Sessions Judge, Rewari, whereby the concession of regular bail to the appellant was declined in FIR No.129, dated 13.06.2022, under Sections 120-B, 148, 149, 302, 323, 325 IPC and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Rampura, District Rewari, Haryana.

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

“TO The S.H.O. Sir, Police Station: Rampura District Rewari I Sanjay son of Rajbir, resident of Dev Nagar, caste Valmiki is a resident of Katopur Police Station Rampura, District Rewari. We are three brothers and a sister and all are married. My father is no more and my mother is alive. Me and my brother Anil resides in our house at Dev Nagar Katopur. My elder brother Sunil son of Rajbir was residing on rent at Adarsh Nagar old Bijli Ghar, whose two sons Mohit and Sohita stays together. That tonight on 12/13.06.2022 at night around 12:30 Amit son of JW Lawrence Budhmata Katopur called my brother Sunil from the house and in front of the gate of old Biji Ghar and in front of the shop of Gaurav @ Gauri son of Brij Bhushan, Aakash, Krishan sons of Raj Kumar, Mohit, Gauri sons of Brij Bhushan and son of Gauri's paternal uncle, Prince and Krishan, Manish son of Lala, Sivdu son of Nathu Ram and Mitthal residents of Aadharsh Nagar Katopur and Prashant Resident of Ladhuwas Vishal (cousin brother of Krishna) and Vishal Ahir resident of Kankarwali were all hiding there after parking their vehicles. All were having sharp edged weapons, Rod, Sticks and other boys were also there attacked my brother and my brother was hit on his head, both legs, both hands were broken after being hit with sticks, rods and serious injuries were given on the head, that at the scene I was present along with my brother Anil @ Dhaniya, my nephew Sohita and my brother Sahil's brother-in-law Ravi. And we tried a lot for withdrawal of my brother. That these people have unnecessarily given serious injuries to my brother. And after hitting, Aakash and Krishan in their Creta and Scorpio car and Gauri in

his Bolero car fled away and Mohit ran away on his KTM Bike. That these people ran away after making my brother unconscious. Thereafter dialing 112, we got out brother admitted in government hospital Rewari. Upon being seriously injured doctor referred my brother to PGIMS Rohtak and while we were taking our brother Sunil for treatment to Rohtak in government ambulance then on our way near Jhajjar, my brother succumbed due to the injuries sustained by him. That after getting him checked at Govt. Hospital Jhajjar, he was declared dead and dead body was kept at Dead house. That my brother has been hit by all of them and has been killed. Legal action be taken against all the aforesaid.”

3. **Contentions**

On behalf of the appellant

Learned counsel for the appellant contends that during the course of trial proceedings, PW-6 i.e. complainant namely Sanjay has turned hostile and is not supporting the case of the prosecution with further supporting his assertion citing PW-7 and PW-8, who are prime eye-witnesses, also on the same lines as of the lines of PW-6, who is not supporting the case of the prosecution and in that eventuality, he would argue that false implication of the appellant is at writ large in the prosecution story and on that account, argues that there is strong probability of earning acquittal by the appellant before the trial Court and presses for grant of regular bail to the appellant in the instant FIR.

Learned counsel for the appellant asserts that his co-accused namely Parvesh @ Babu, Akash, Krishan Yadav, Sachin @ Sam have been granted the concession of regular bail by this Court vide orders dated

07.12.2023, 16.04.2024 10.05.2024, 27.05.2024 passed in CRA-S-2827-2023, CRA-S-316-2024, CRA-S-1792-2024 and CRA-S-1984-2024 respectively.

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 does not controvert the factum of witnesses turning hostile including PW-6 Sanjay. However, he seeks dismissal of the instant petition on the ground that the appellant is a habitual offender as he is involved in ten more cases.

On behalf of the complainant

Learned counsel for the complainant does not controvert the fact that the complainant i.e. PW-6 as well as witnesses i.e. PW-7 and PW-8 have turned hostile, rather submits that the appellant is a habitual offender as he is involved in ten more cases.

4. Analysis

Be that as it may, considering the custody period i.e. 02 years, 03 months and 27 days for which the appellant has suffered incarceration; co-accused namely Parvesh @ Babu, Akash, Krishan Yadav, Sachin @ Sam have been granted the concession of regular bail by this Court vide orders dated 07.12.2023, 16.04.2024 10.05.2024, 27.05.2024 passed in CRA-S-2827-2023, CRA-S-316-2024, CRA-S-1792-2024 and CRA-S-1984-2024 respectively; the complainant and other witnesses have turned hostile added with the fact that challan stands presented to Court on 09.09.2022, charges have been framed on 12.01.2023 and out of total 24 prosecution witnesses,

only 11 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.

As far as the pendency of other cases and involvement of the petitioner in other cases 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 concession of bail.

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 case.

15.10.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No