

2024.PHHC.100123



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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-29667-2024 (O&M)
DATE OF DECISION: 05.08.2024**

HITESH BHARDWAJ ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohit Uppal, Advocate for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

CRM-27754-2024

This application has been filed for correction of the typographical error in the petition to substitute Section 302 IPC with Section 307 IPC, 1860.

Notice of the application.

Learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submits that he has no objection if the application is allowed.

In view of the reasons mentioned in the application and no objection by the State Counsel, the application is allowed and it is directed that in the petition Section 302 IPC be read as Section 307 IPC.

CRM-27755-2024

This application has been filed for placing on record copy of the Statement of the accused as Annexure P-4 and P-5.

For the reasons recorded in the application, the same is allowed and Statement of the accused is taken on record as Annexure P-4 and P-5.

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. 0094, dated 16.03.2024, under Sections 307/34/506 IPC, 1860 and Sections 25 and 29 of Arms Act registered at Police Station Bhalgarh, District Sonipat.

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

'I am a resident of Sonipat and Mohan Virendra, a resident of village Gumad, works at Pehal Nutrition's shop in Bahalgarh. Ajay, Sumit and Ravindra also work with me. A few days ago, Vikrant of village Basaudi, whom I already know, took supplements from our shop. After that, one day Vikrant came to the shop again and said that the supplements were sold at a higher price. There was an altercation over this matter. And Vikrant left after being explained. Today, on 16.03.24, Vikrant came to the shop at around 6.15 PM and asked Ajay about me and Mohan inside the shop. Ajay told him that Mohan has gone out and Rohit is standing outside. Seeing me standing outside, Vikrant fired directly at me from inside with the intention of killing me with the pistol in his hand. The bullet hit the glass of

the shop and I narrowly escaped. Then Vikrant came out and tried to shoot at me but the bullet did not fire. So Vikrant said that today I have been saved but in future I will kill you. And in future I will teach you a lesson for giving me more expensive supplements. Then he sat on his friend's bike which was standing outside and fled towards Rai. I request you to take legal action against Vikrant and his friend. SD ROHIT-9992920816 Dated 16.03.2024

Action Police-Today on 16.03.2024, information was received at Bajaria Telephone Police Station from Police Control Room Sonipat that a shot has been fired at Pehal Nutrition Bahalgarh Chowk. An investigator should be sent for action, on which information I, ASI along with HC Shivaom 2130/SPT, Si. Mehtab No. 769/SPT along with government vehicle whose driver Manish/Kaushal has reached the shop of Pehal Nutrition at Bahalgarh Chowk for action regarding employment. Where Rohit above mentioned himself presented the above written application to the ASI, which on seeing the compulsion of the application and considering the spot, was found to be a crime under section 307.34 IPC and 25-54-59 A.ACT, after writing a written complaint, a regular case was registered against him under Si Mehtab No. 769/SPT, after informing the police station with the registered case number. FSL team should be sent to the spot and SHO saliab should be informed about the situation. And a special report of the case should be sent to the officers. I have the opportunity for investigation by the ASI. Today, first Nutrition Bahalgarh Chowk SD SURJEET SINGH ASI Thana Bahalgarh Date-16.03.2024 AT-07.15 PM Today, on arrival at Thana, FIR No. 94 dated 16.03.2024 Section 307,34 IPC and 25-54-59 A.ACT IPC Thana Bahalgarh registered. After filing the case, special report of this case is being sent to Bajaria email officer Bala and email ID of area magistrate sahab and will also be sent to Bajaria post. Copy of Misal Police along with original Tahrir was given to

Arinda Si. Mehtab 769/SPT and sent to spot. Siho sahab was informed about the situation on telephone at Bajaria. Case was registered in the presence of ASI Manjeet 795/SPT Sonipat. '

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case and he was not named in the FIR. He submits that the petitioner was arrested solely on the basis of disclosure statement of the co-accused and the petitioner was not present at the spot at the time of occurrence as is evident from the CCTV footage. The petitioner has been attributed no injury but as per the prosecution case, he has arranged weapon. The petitioner has been in custody since 02.05.2024. He submits that investigation is complete as challan stands presented on 23.05.2024. 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 18 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 3 months.

Learned State Counsel submits on instructions from the ASI Surjeet opposes the prayer for grant of regular bail on the ground that the petitioner is involved in other FIRs i.e. FIR No. 203/2024,

dated 170.03.2024, registered under Sections 392/34, at P.S. Narela, North Delhi and FIR No. 276/2024 dated N/A, registered under Sections 25/54/59 of the NDPS Act at P.S. Narela, North Delhi, therefore, is a habitual offender, but the State Counsel is not in a position to controvert the submissions made by counsel for the petitioner.

4. Analysis

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 3 month and no injury has been attributed to the present petitioner, also he was nominated on the basis of disclosure statement of the co-accused 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 23.05.2024, out of 18 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.

As far as the pendency of other cases and involvement of the petitioner in other FIRs is concerned, the petitioner is on bail in one FIR and 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

05.08.2024
anuradha

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