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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30289-2024
DECIDED ON: 31.08.2024

SABIR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sourabh Kandoi, Advocate for
Mr. Munfaid Khan, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.338, dated 20.12.2023 (Annexure P-1), under Sections 148, 149, 186, 307, 429 IPC, Section 13(2) the Haryana Gauvansh Sanrakshan & Gausamvardhan Act 2015 and Section 25 of Arms Act, 1959, registered at Police Station Dhauj, District Faridabad.

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

“To the SHO of Police Station Dhauj Faridabad, Jai Hind. Today, I ASI along with constable Aman no. 4013 in Govt. vehicle bearing registration no. HR 87GV1358 driven by constable Devender no. 3872 was present near

village Pakhal on night crime patrolling duty. In the meanwhile, the secret informer gave the secret information that 5-6 cow smugglers after loading 6 cows tied their legs and mouths with ropes in pick-up no. HR 55AQ 2956 for slaughtering purpose will go from Faridabad toward Sohna. If the Naka Bandi is started, then pick-up loaded with cows can be apprehended. On considering the secret information as a trust worthy, the Naka Bandi was started at Bus Stand Near Village Pakhal. After sometime, one pickup bearing registration no. HR 55 AQ 2956 was seen with high speed from Faridabad side. On watching police party standing ahead, the pickup driver after taking U-Turn started to run away toward village Nekpur. On which. I ASI along with my colleagues started to follow pickup. In the meanwhile, Gorakshak Anil Kaushik son of Jitender Kaushik resident of house no. 380, Parvatiya Colony NIT Faridabad and Aadesh Kumar son of Jai Singh Resident of NCF House no. 6847, Sanjay Colony Faridabad along with their friends came in their vehicle. The persons sitting outside the pickup cabin were pelting the stones toward us and pickup driver via village Fatehpur Tagah reached in village Aalampur. I ASI with the help of Gaurakshak Dal surrounded that pickup from all side and on watching surrounding themselves, they left the pickup while firing upon us. I ASI and cow protectors made lot of efforts to apprehending them, but they succeed to run away by taking the benefit of darkness and narrow type ways of village Aalampur. On checking pickup, 6 cows whose legs and mouth were tied mercilessly were found, whose photography was prepared by my mobile. On searching the vehicle, the stones and ropes were found on roof of the vehicle and one live cartridge of 8 MM KF was found in the body of the

vehicle. One rope and knife having 14.6 CM length and 12 CM length were found in the cabin of the vehicle. The yellow number plate bearing registration no. HR 55 AQ 2956 was attached in backside. The live cartridge and knife were taken into police custody vide recovery memo signed by witnesses. The unknown persons after loading the cows for slaughtering purpose in their pickup mercilessly and by firing and pelting stones upon police party and cow protectors committed the offences punishable under section 148, 149, 186, 307, 429 IPC and Section 13(2) HGSG Act, 2015 and section 25-54-59 of Arms Act.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has no concern with the offending vehicle as he was neither the driver of the said vehicle nor the owner of the same. He further contends that the petitioner was not arrested from the spot and nothing has been recovered from him. It has been asserted on behalf of the petitioner that no incriminating material is coming forth qua the petitioner to connect him with the alleged offence. The petitioner is in custody since 30.12.2023 and is ready and willing to join the investigation and cooperate with the investigating officer, as has been asserted by learned counsel for the petitioner.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is

a habitual offender as he is involved in four other cases, wherein he is on bail.

4. **Analysis**

Be that as it may, considering the custody period i.e. 08 months and 01 day for which the petitioner has suffered incarceration; the petitioner was neither the driver of the alleged vehicle nor the owner of the same; the petitioner was not arrested from the spot and nothing has been recovered from the possession of the petitioner; investigation is complete, challan stands presented to Court on 15.02.2024, charges were framed on 23.04.2024 and out of total 21 prosecution witnesses, none has 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 petitioner 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 petitioner 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 petition 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.

31.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No