

217

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34568-2024
DATE OF DECISION: 06.08.2024

BABLU NAGAR ALIAS BABLU KUMAR
...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parvesh Bishnoi, Advocate for the petitioner.
Mr. Chetan Sharma, DAG, Haryana.
Mr. Shashikant Bishnoi, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

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. 351, dated 27.07.2023, under Section 302 IPC, 1860 registered at P.S. Dabua.

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

‘Sir, brief fact of the case that on 27.07.2023 through telephone information was received in the police station Dabua that Chandan@ Sonu S/o Lalit Kumar R/o Uttam Nagar, Gazipur Road, Dabua colony has died in the fight and thereafter for investigation, Investigation officer was send on the spot and he alongwith SI Jaan Mohd. HC, Vinesh 2807 and STO Satis Kumar 712 reached at the spot where brother of deceased Chandan @ Sonu, Dhirander gave a written complaint and the contents of same are as under To SHO, Police station Dabua, Faridabad Sir,



it is humbly submitted that I Dhirander S/o Lalit Kumar R/o village Billhaka, Gurugram now is resident at Uttam Nagar, Gazipur Road, Dabua colony. We are three brothers and I am elder one and Manish is younger to me and Chandan @ Sonu is youngest and he is near about 23 years old and who is unmarried. Whereas on 26.07.2023 at near about 12:10 AM he went in the vacant place near the Jali Factory where Bablu Nagar S/o Bijender, Rocky @bablu S/o Sanjay, Sachin, Vicky, Mangli@ Mangal S/o Manoj Kumar and Bhim Contractor, Irfan, Jeetu Badhana, Vishnu S/o Lal Singh they consumed leaker together on the vacant place of Jali Factory and previously, a scuffle had taken place earlier with Bablu Nagar S/o Bijender and Chandan @ sonu and before few days back he gave threat to kill him and due to said enmity Bablu alongwith his friends gave injury on the head, eyes, forehead, left ear with some sharp edge weapon and also with stones and killed him where as on the information I alongwith my brother Manish reached at the spot and we saw that the dead body of my brother Chandan @ sonu lying with pool of blood and I personally verified that my brother Chandan @ sonu has been killed by Bablu Nagar s/o Bijender alongwith his friends with sharp edge weapons and legal action may be taken against them. Sd/ Dhirender Singh Complainant PH. 8826614929 dt. 27.07.2023 and thereafter FIR u/s 302 has been registered.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He submits that it is a case of documentary evidence wherein FSL report was also inconclusive regarding the fingerprints on the brick used in the commissioning of the alleged offence and was recovered from the spot.

He further argued that the motorcycle used in the alleged incident does



not belong to the petitioner and as per the prosecution itself, challan stands presented to the Court on completion of the enquiry and there is no evidence against the petitioner to connect him with the alleged offence. He submits that the petitioner has been in custody for last almost 1 year and is not involved in any other case. He submits that investigation is complete as challan stands presented on 20.10.2023 and charges have been framed on 18.03.2024. 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 25 Prosecution Witnesses, only one witness 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 files the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year and 1 day.

Learned State Counsel submits on instructions from the ASI Sudeep opposes the prayer for grant of regular bail stating that if he is released on bail, he can influence the witnesses. Although he submits that recovery of the blood stained brick has already been effected from the spot but the FSL does not carry any report whereby the finger prints if available on the said brick.

On behalf of the complainant

Learned counsel for the complainant opposes the prayer for grant of bail on the ground that the petitioner was specifically named in the FIR and there was enmity between the petitioner and the



complainant and no material witness has been examined so far, therefore, prays for dismissal of the instant petition.

4. **Analysis**

Be that as it may, having given thoughtful consideration to the arguments raised by counsel for the parties and from the above case it can be culled out that it is a case of circumstantial evidence and nominated merely based on the statement of the complainant and the FSL report which is inconclusive regarding the finger prints on the brick used in the alleged offence. PW-1-complainant statement has also been read over whose examination-in-chief has been completed in the Trial Court wherein he could also not show any specific role of the petitioner in commissioning of the alleged offence and moreover, the petitioner was admittedly not present at the spot.

As per the argument raised by counsel for the complainant qua enmity, it can also be not ruled out that name of the petitioner might have been dragged on the basis of that enmity between them. Further, the petitioner has already suffered sufficient period in custody i.e. 1 year and 1 day, he is not involved in any other case, 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 20.10.2023 and charges have been framed on 18.03.2024, out of 25 prosecution witnesses, only one PW 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.

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 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

06.08.2024
anuradha

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