

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

DATE OF DECISION: 16.07.2024

...PETITIONER

Versus

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S. Bains, Sr. Advocate with
Mr. M.S. Chauhan, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 40, dated 13.02.2024, under Sections 147/149/186/188/307/332/352 of IPC, and Section 3 of Prevention of Damage to Public Property Act, 1984 and under Section 8B of National Highway Act, 1956 registered at Police Station Ambala Sadar, District Ambala.

2. Learned Senior counsel for the petitioner contends that the petitioner has been falsely implicated in this case. He submits that as per the alleged allegations, the petitioner along with other farmers assembled at Shambu Border of Punjab during the enforcement of order of Section 144 of Cr.P.C. and in connivance with each other they tried to break the barricades of the police officials and attacked them. The petitioner has been in custody since 28.03.2024. He further submits that investigation is complete, challan stands presented on 20.05.2024 and conclusion of trial will take long time to conclude as



out of 52 prosecution witnesses, none has been examined so far. He asserts that similarly situated co-accused- Gurkeerat has also been granted bail by the lower Court on 06.06.2024.

3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 3 months and 15 days. He opposes the prayer made in the petition stating that the petitioner is involved in one more FIR also, however, is not in a position to controvert the submissions made by Senior counsel for the petitioner that similarly situated co-accused- Gurkeerat has also been granted bail by the lower Court.

4. Having heard learned counsel for the respective parties, and keeping in view the facts that investigation is complete, challan is presented on 20.05.2024 and since the petitioner has already suffered sufficient period in custody i.e. 3 months and 15 days and the fact that co-accused- Gurkeerat has also been granted bail by the lower Court on 06.06.2024, this Court do not find any reason to deny the petitioner concession of bail.

5. As per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved beyond reasonable doubt, whereas in the instant case, trial is likely to take long time in the light of the fact that out of 52 prosecution witnesses, none has been examined so far. Detaining the petitioner behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is

an exception” as elucidated in the judgement of Apex Court in



“Dataram Singh vs. State of Uttar Pradesh and another;, (2018) 3 SCC 22”.

6. Even further, right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. 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*; wherein it was held as under:

*“10. Directions given by this Court in Hussainara Khatoon (supra) to this effect were left to be implemented by the High Courts **Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc. -(1995) 5 SCC 326 - para 2** are as follows :*

"2. Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of undertrials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case-to-case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the State concerned. We share the sympathetic concern of the learned counsel for the petitioners that undertrials should not languish in jails for long spells merely on account of their inability to meet monetary



obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases...."

(emphasis added)

7. Moreover Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in “***Abdul Rehman Antulay and others v. R.S. Nayak and another***”, 1992(2) RCR (Criminal) 634 observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. And court also observed that the Right to Speedy Trial from the point of view of the accused are:

I. The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

II. The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and



III. Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

8. 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.

9. As per petitioner’s own case, he is involved in as many as 15 more cases and out of those 15 cases, in six cases he stands acquitted and in three cases investigation is still going on. All the cases are on the same lines, which seems to have been registered within close proximity on the same set of allegations. Moreover, all the cases have been registered in Ambala District only, which is sufficient for this Court to infer that the petitioner is being dragged in all those cases falsely. 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.



10. In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.
11. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.
12. Petition is allowed in above terms.

(SANDEEP MOUDGIL)
JUDGE

16.07.2024
anuradha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No