



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-33641-2024 (O&M)
DECIDED ON: 09.08.2024

RAHUL YADAV ALIAS RAHUL

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Balwinder Sangwan, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

CRM-28929-2024

This is an application for placing on record Annexure P-7 and
for exemption from filing certified copy thereof.

For the reasons mentioned in the application, the same is
allowed subject to all just exceptions. Annexure P-7 is taken on record.
Exemption sought for is granted.

Application stands disposed off.

CRM-M-33641-2024

1. Relief sought

The jurisdiction of this Court under Section 483 of BNSS, 2023
has been invoked for grant of regular bail to the petitioner in FIR No. 209,
dated 17.08.2023, under Section 25 of the Arms Act, 1959 and Sections 392,

397, 201, 285, 120-B IPC added later on and Section 379B, 34 IPC was deleted later on) registered at P.S. B.P.T.P, Faridabad, District Faridabad.

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

“To Sir, SHO SAHIB Police Station BPTP, SECTOR-76 FARIDABAD It is requested that I am Ankush Kumar Jain, son of Shri Kundan Lal Jain, resident of House No. 441, Sector- 17, Faridabad. My Jewellery Shop is located in Puri Mall Sector-8 1 SHOP NO. C-012, on the ground floor. Like daily, I came to my shop in my car with my driver Jai Bhagwan and Suneet (working in the office AS A SELLER GIRL). I reached my shop and placed my briefcase in front of the shop and we started opening the shop. One of the three young boys picked up the briefcase and ran away. His two other friends also participated. When all three of us ran after them, one of the three young boys fired outside and said that if we chased them, the consequences would be bad. Then they ran away on his bike parked outside on the road. There may be two other boys with them on another bike also who may be with them. There were about 55 thousand rupees in my briefcase and the keys of my safe numbered 3 were there, some documents were also there. Legal action should be taken against them. I can recognize them if they are brought in front of me. This incident happened today morning at 10.45 AM. Applicant ANKUSH KUMAR JAIN MOB-9811144144 DT. 17.08.2023 Action Police: Today on 17.08.2023 at around 11.00 AM, I am present in Sector-12 court that I received a call from MHC BPTP that money etc. was snatched from Sector-8 1, Puri Mall. You reached the spot. On which I reached SI Puri Mall Road 81, Shop No. C- 12. GF spot, where Mr. Sanjay Kumar 1147 and driver Surendra 4086 were found present at the

GF spot. The above mentioned applicant/complainant resented a written application which was found to be a crime punishable under section 379B/34 IPC 25/54/59 A.ACT due to the force of the application and a Tahrir Haja Baraye pending case was sent to the police station of M/s Sanjay Kumar 1 147/ Fri. Is going. Later, inform the registered case number through the form. The special report of the case should be sent to the concerned officer. The manager of the police station was informed about the situation. My mind is busy investigating the situation. AJ Shop No. C-12, GF Puri Mall, Sector-81, Faridabad SD-SI BALWAN PS BPTP FBD DT, 17.08,2023 AT, 11,50 AM Aaj Police Station:- On receipt of Hasb Amda Tahrir in the above police station.. Case No. 209 dated 17.08.2023 Section 379B/34 IPC 25/54 / 59 A.ACT Police Station BPTP Faridabad was registered and copies of the FIR were prepared by computer as per rules. The special report of Sude Haja is being sent by Bajaria Post in the service of concerned Officer Balan vide number Monu 3034/ Fri. The duplicate police complaint and the original complaint are being sent to Arinda M.S. on 1/0 occasion for further action. Note: Sus Haja's attendance is of ASI Raj Singh 2291/Fri and I/O SI Balwan Singh No. 2095/ Fri, Police Station BPTP Faridabad."

3. **Contention:**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is at parity with another co-accused, namely, Ankit, who has been granted the concession of regular bail by this Court vide order dated 18.07.2024 (Annexure P-7). He further contends that in the present FIR, nobody was named and during the investigation the police has arrested four accused

persons including the present petitioner. It has been submitted on behalf of the petitioner that no role has been attributed to him to connect him with the alleged commissioning of the offence. He further points out that co-accused namely Ajay Kumar and Rahul Pal have been granted the concession of regular bail vide orders dated 04.06.2024 (Annexure P-6) and 14.06.2024 (Annexure P-5) passed in CRM-M-28346-2024 and CRM-M-14027-2024.

On behalf of 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 involved in two more cases, meaning thereby, he is a habitual offender, however, he is not in a position to controvert the submissions made by counsel for the petitioner that the petitioner is at parity with another co-accused Ankit. He fairly informs the Court that the complainant has turned hostile.

4. **Analysis**

Be that as it may, considering the custody period i.e. 11 months and 21 days for which the petitioner has suffered sufficient incarceration and the fact that the complainant has turned hostile; the petitioner is at parity with another co-accused Ankit, who has been granted the concession of regular bail by this Court vide order dated 18.07.2024 (Annexure P-7); no role has been attributed to the petitioner to connect him with the alleged commissioning of offence; Other co-accused persons, namely, Rahul Pal and Ajay Kumar have been granted the concession of regular bail by this Court vide Annexures P-5 and P-6 respectively added with the fact that challan stands presented on 20.12.2023, charges have been framed on 15.04.2024,

out of total 35 prosecution witnesses, only 01 witness has been examined so far, meaning thereby, the conclusion of the 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 principle of 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 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 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.

09.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No