



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-34419-2024 (O&M)
DATE OF DECISION: 13.08.2024

GURKIRAT SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amandeep Singh, Advocate and
Mr. Abhishek Malhotra, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)CRM-28667-2024

This application has been filed under Rule 3-A(i) of the Chapter 6 Part B Volume V of the High Court Rules and orders for grant of leave to filing the present case without number of Roll of advocate.

For the reasons mentioned in the application, the application is allowed.

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.48 dated 22.03.2024, under Sections 382 IPC and later on vide Rapat No.40 dated 22.03.2024 under Sections 408, 120-B, 411 were added and thereafter, vide Rapat No. 36 dated 21.05.2024, under Section 408 IPC was omitted and Section 395 was added and further vide Rapat No. 24 dated 05.06.2024 Section 382 was omitted, registered at Police Station City Muktsar Sahib.



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

‘First information contents:- Statement of Harjeet Singh son of Baljeet Singh son of Gajjan Singh resident of village Sangu Dhaon District Sri Muktsar Sahib aged about 21 years mobile number 6239174373 stated that I am resident of the above mentioned address and working as a salesman at Mange Da Pump located at Malout road Sri Muktsar Sahib. When I was on duty on 20.03.2024 from 8:30 p.m. to 9:30 a.m dated 21.03.2024. Then at about 5:40 a.m., I was refueling a truck from the machine at the pump and security guard of the pump Harpreet Singh resident of Goniana road Sri Muktsar Sahib had gone to washroom as it was morning time and my attention was towards refueling, then two unknown persons whose faces were covered with handkerchief who after entering the office in the pump were running after getting out, then I followed them, then out of two unknown persons one took out a Kaapa and tried to hit me and I stepped back out of fear then the other person pushed me and I fell down on the ground, then the mentioned persons succeeded in running away from the spot. Then I along with security guard Harpreet Singh checked the cash drawer of the table kept in the office, the cash kept there was not available which was stolen by the unknown persons which was approx Rs. 70/75 thousand. I can recognise the unknown persons involved in theft if they are in front of me. About which I immediately informed the pump owner Sanjeev Dabra @ Billu Dabra. About which me and my Pump Owner Sanjeev Dabra @ Billu Dabra were investigating by checking the cameras, we could not find anything, now we are coming to the Police Post Bus stand Sri Muktsar Sahib for giving you the information, you rnet us at the gate of the bus stand. Statement has been recorded to you, has been heard which is correct. Action be initiated against the unknown persons. Sd/- Harjeet Singh.’



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and FIR was registered against one unknown person. He submits that nothing has been recovered from the petitioner and there is no direct evidence to connect the petitioner with the alleged incident. It is his further contention that the petitioner is in custody for more than 4 months and has clean antecedents, 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 9 Prosecution Witnesses, only 4 have 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 4 months and 18 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 19.06.2024 and charges stands framed on 01.07.2024.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 4 months and 18



days, no recovery has been effected from him, his antecedents are clean, 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 19.06.2024 and charges stands framed on 01.07.2024, out of 9 prosecution witnesses, only 4 PWs have 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 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/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

13.08.2024
anuradha

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