



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

225

CRM-M-34661-2024
DATE OF DECISION: 13.08.2024

PARDEEP ALIAS PRADEEP KUMAR ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Chauhan, Advocate for the petitioner(s).
 Mr. Chetan Sharma, DAG, Haryana.
 Mr. S.S. Khurana, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.73 dated 20.05.2021, under Sections 302/34 IPC, 1860 (Section 120-B IPC added later on) registered at Police Station Rewari Sadar, District Rewari.

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

‘To, SHO, PS Sadar Rewari. Sir, it is requested that I Jitender son of Shri Nihal Singh resident of village Gokalgarh District Rewari. We are four brothers and we live separately from each other. I Jitender son of Nihal Singh works in a hotel and because of Lockdown it is closed now. Thus, I am at my village. Surender lives near main road. Surender's children went



to their in-laws' house around 15 days ago and he eats food in my house only. Yesterday on 19.05.2021 at around 5/5.30 PM he called and informed my mother that today he will not come to eat food as his four friends are coming at his house and he will eat food with them. Today morning when Surender did not come to eat food then I went at his house there I saw that he is lying dead on bed and there were marks arounds his neck and blood was also coming from his nose and mouth. Blood was also coming out from little finger of his right foot. It appears to me that some unknown person has killed my brother Surender by throttling him. My cousin (son of father's brother) namely Dhanvir son of Raghunath told me that yesterday on 19.05.2021 at around 10/10:30 PM, he saw one silver color ALTO car standing outside the house of my brother Surender. Sd/ Jitender Name Jitender son Nihal Singh village Gokalgarh District Rewari. Mob. 9811988876.

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 he was even not present at the alleged place of occurrence and there is no direct evidence as produced by the prosecution to connect the petitioner with the alleged incident. He submits that the case set up by the prosecution is purely based on circumstantial evidence and the petitioner was not even named in the instant FIR. He seeks parity with co-accused Mangat Ram who has been granted the concession of regular bail by this Court vide order dated 08.07.2024 passed in **CRM-M-62903-2023**. He further submits that the petitioner is behind the bars for last 3 years, 2 months and 17 days and no fruitful purpose would be



served by further keeping the petitioner behind the bars as the conclusion of trial would take long time as out of total 25 Prosecution Witnesses, only 10 PWs 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 3 years, 2 months and 17 days.

Learned State Counsel on instructions from the ASI Mavanveer opposes the prayer for grant of regular bail on the ground that the petitioner is involved in another FIR No. 124/2023 dated N/A, under Sections 323/506 IPC registered at P.S. Bhondsi, Gurugram, therefore is a habitual offender, but is not in a position to controvert the submissions as made by the counsel for petitioner. He informs the Court that in the instant FIR challan stands presented on 15.07.2021 and charges stands framed on 13.09.2021.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 3 years, 2 months and 17 days and similarly situated co-accused has already been granted concession of bail by this Court, further he was not even present at the alleged place of occurrence also there is no direct evidence as produced by the prosecution to connect the petitioner with the alleged incident.

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 15.07.2021 and charges stands framed on 13.09.2021, out of 25 prosecution witnesses, only ten have been examined yet which is sufficient for this Court to infer that the conclusion of trial is likely to take a considerable amount of 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 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 case and involvement of the petitioner in other case 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 the concession of bail.

5. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 483

BNSS, 2023 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

13.08.2024
anuradha

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