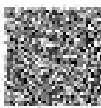


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2024.PHHC.110861



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34886-2024
DECIDED ON: 28.08.2024

NIRMAL SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kuldeep Singh Ahluwalia, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.53, dated 29.02.2024, under Sections 307, 34 IPC and Section 326 IPC added later on vide DDR No.17, dated 02.05.2024, registered at Police Station Sadar, District Mansa.

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

“Nakal statement. Statement of Gurpreet Singh @ Mangū s/o Bhola Singh Residence of Khokar Khurd Age about 27 years, Mobile No. 62390-94036. Stated that, I am resident of about mentioned address and doing the labor work. On 19/02/2024, Sewa Singh s/o kartar Singh residence on Khokar Khurd Called me from my house by

saying that we have to go to Nirmal Singh house. When we entered into the house of Nirmal Singh, the time was around 7:45 in evening. Sewa Singh turned aside and on the left side of the gate Nirmal Singh was standing having iron datti in his hand. On entering the gate Nirmal Singh gave below of his iron datti towards me, and to save myself. I raised my right hand to save myself, and the palm of my right hand was got injured due to blow of iron datti. when I tried to push him, then sewa Singh came in front of me having kirpan in his hand. Then sewa Singh gave 3 - 4 below of his iron kirpan on my head with intension to element me. I fell down on the earth than Nirmal Singh gave datti below on my head with intension to kill me. I raised voice "Na Maro/ Na Maro". during I was fell on the earth, Nirmal Singh gave 3-4 below of his iron datti on my right feet and sewa Singh also gave 2-3 blow on my left feet. Nirmal Singh gave blow of his iron datti from reverse side thereafter I got unconscious and I don't know what happened. then son of my uncle (chacha) Namely Hardip Singh got me admitted in hospital at Mansa. As I recieved multiple injuries, due to that doctor refer me to Rajendra Hospital at Patiala. The cause of grudge is that we all three have dunked liquor together and thereafter we had some argument and then I came to my house. Then Sewa Singh with intension the cause Major injury called me at the house of Nirmal Singh legal action taken against. Nirmal Singh s/o Mahendra Singh, sewa Singh s/o kartar Singh Residence of Khokar Khurd. till today we are in the talk of compromise. The statement has been recorded and heard and the same as correct Sd./ Gurpreet singh @ Mangoo abovemention. Verified by ASI Gurdarshan singh 654/Mansa PS. Sadar Mansa."

3. Contentions**On behalf of the petitioner**

Learned counsel for the petitioner contends that there is an unexplained delay of 10 days in lodging the instant FIR as the present FIR has been registered on 29.02.2024 whereas the alleged occurrence took place on 19.02.2024. He further contends that the injury on the vital part on the person of the complainant i.e. on head has been attributed to co-accused Mewa Singh. It has been asserted on behalf of the petitioner that nothing is to be recovered from the present petitioner, who is in custody since 02.03.2024.

On behalf of the 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 along with co-accused Mewa Singh was armed with sharp edged weapons i.e. iron kapa and Kirpan and have caused 11 injuries on the person of the complainant. In addition, the petitioner is a habitual offender as he is involved in one more case.

4. Analysis

Be that as it may, considering the custody period i.e. 05 months and 23 days for which the petitioner has suffered incarceration; there is an unexplained delay of 10 days in lodging the instant FIR; the specific injury on the head of the complainant has been attributed to the co-accused Mewa Singh not to the present petitioner; investigation is complete, challan stands presented to Court on 23.05.2024, charges were framed on 10.07.2024 and out of total 12 prosecution witnesses, none has been examined so far, which

is suffice for this Court to infer that the conclusion of 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 and fundamental 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 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 hereby 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.

28.08.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No