



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34872-2024
DECIDED ON: 15.10.2024

AKHTAR ALI ALIAS CHUTTAN
.....PETITIONER

VERSUS

THE STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vipul Aggarwal, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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.125, dated 05.04.2024, under Sections 13(1), 13(3) of the Haryana Gauvansh Sanrakshan & Gausamvardhan Act, 2015 (hereinafter referred to as ‘Act of 2015’ in short) (Section 3/13(1), 8/13 (3) of Act of 2015) and Section 120-B of IPC, registered at Police Station Sadar Nuh, District Nuh.
2. Prosecution story setup in the present case as per the version in the FIR as under:-

To, SHO Police Station City Nuh Jai Hind. Today I the SI along with ESI Satbir Singh No.603/Nuh, HGH Belt No.241 and were riding on a government vehicle Bolero No.HR-27-GV-5892 driven by Bijendra Singh (Kaushal Rojgar) and while patrolling were present at Palwal T.

Point Nuh that an informer gave information that Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi, Jamaluddin son of Shokat, Habin son of Haji Gunga, Mustafa son of Akhtar Ali alias Chuttan and Mubina wife of Akhtar Ali alias Chuttan residents of village Ghasera Police Station Sadar Nuh are involved in cow slaughtering. Today also in Palla Pahar Bal after doing cow slaughtering, after cutting beef into small pieces Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi residents of Ghasera Police Station Sadar Nuh, will keep it in the room of the house and by packing in polythene would sell it. If the house of Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi resident of Ghasera Police Station Sadar Nuh is raided quickly then he can be apprehended alongwith the beef. On considering the information to be true, the passers-by were asked to join the raiding party but all the passers-by, being from the same community, went away expressing their legitimate compulsions. After informing the fellow employees of the information alongwith the informer reached at the disclosed place then the gate of the house was found to be locked from inside. Upon knocking the door all the men and one woman managed to escape through the roofs while making noise from inside the house. That upon opening the gate from inside after jumping from above and upon looking inside the room, about 50 Kg of beef freshly slaughtered in small & big pieces and one axe, one iron knife, one pressure of iron, one electronic weighting scale and one small steel plate were found, which were kept in a plastic bag and a separate parcel was prepared which was stamped by stamp BS. The stamp was handed over to ESI Satbir Singh for its later use. That the aforesaid recovered about 50 kg of beef was put in separate plastic bag and a parcel

was prepared and was taken into police custody so as to serve as a proof on receipt of the list. On receipt of the list, signatures of the witnesses were obtained. Which the accused Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi, Jamaluddin son of Shokat, Habin son of Haji Gunga, Mustfa son of Akhtar Ali alias Chuttan and Mubina wife of Akhtar Ali alias Chuttan, resident of Ghasera Police Station Sadar Nuh, aforesaid people together committed cow slaughtering and by keeping the beef in the room of the house of Akhtar Ali alias Chuttan had committed offence under Section 3/13 (1), 8/13 (3), HGS GS ACT and 120-B IPC, upon which for the registration of FIR it is sent to the Police Station through ESI Satbir Singh No. 603/Nuh. After the registration of FIR its number be intimated. For the further investigation of the case, the other investigating officer be sent at the spot. I the SI alongwith case property alongwith fellow employees are present at the spot. Today:- Village Ghasera. Sd/- BACHCHU SINGH CS STAFF NUH Date 05.04.24 AT 8.50 a.m.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends the petitioner has been falsely implicated in the present case as he is physically handicapped having amputated two fingers of his right hand, is not able to hold an axe and therefore, involvement of the petitioner in slaughtering of animals and alleged recovery of beef from his place is highly doubtful. He would further submit that story of the prosecution is also not believable as has been narrated in the FIR that when the raid was conducted on a secret information at the house of the petitioner, all the ladies present at this home fled away

from his house. It has been further asserted that the petitioner has also denied availability of any beef at his house on 05.04.2024 and showing bona fide, he himself surrendered to the police on 06.04.2024 after he came to know about the registration of the FIR wherein actually no raid was ever conducted at his premises.

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 raid was conducted at the house of the petitioner from where the huge quantity of beef was recovered with slaughtering tools.

4. **Analysis**

Be that as it may, considering the custody period i.e. 06 months and 09 days for which the petitioner has suffered incarceration; the petitioner is a man of clean antecedents as he is not involved in any other case, as is evident from custody certificate in addition to the fact that investigation is complete, challan stands presented to Court on 15.05.2024, charges are yet to be framed and prosecution witnesses are therefore to be examined, 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.

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.

15.10.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No