

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

229

CRM-M-38290-2024

DATE OF DECISION: 13.08.2024

RAHUL KUMAR ALIAS TONY

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Singla, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

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.77 dated 25.04.2023, under Sections 302/365/323/148/149 of the IPC, 1860 registered at Police Station Sadar Ludhiana, District Ludhiana.

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

‘Statement of Jaswant Singh son of Ram Agya Singh, resident of Village Basbati, Police Station Sahiara, Bihar, now residents of Tenant of Manoj Dhir's house, Village Dugri, Police Station Dugri, Ludhiana, aged about 42 years. Mobile No. 81461-69410. Stated that I am residing at the above mentioned address along with my family and I am doing work in Jai Bharat Foods Atta Chakki, Mohalla Deep Nagar, Near Rode Railway Crossing, Ludhiana. I have two son i.e. elder son Ujjwal Kumar aged 18 years and younger to him is Aniket aged about 12 years. We are residing in the house of Manoj Dhir on rent. On



23.04.2023, my son Ujjwal Kumar was at home at about 08:00 PM, then the friend of Ujjwal Kumar namely Amit Kumar, resident of Dugri, Ludhiana and Samma, resident of Green City, Dhandra Road, Ludhiana came to our house on the motorcycle and took away my son Ujjwal to Dugri by saying regarding seeing the fair. My son Ujjwal did not come back at home, then we searched enough for Ujjwal upto late night, but he did not meet. On 24.04.2023 at about 08:30 AM, Amit Kumar by making phone call from phone No. 89689-67870 on my phone No. 81461-69410 told me that Ujjwal is admitted at Civil Hospital, Then I and my brother Jaiwant Singh, resident of Tandon Nagar, Jassian Road, Waddi Haibowal, Ludhiana reached at Civil Hospital, Ludhiana, then Ujjwal was in unconscious state in the hospital. Our talk could not take place with him. At that time, Amit had since gone away to his house. My son during the course of treatment had expired at about 11:00 AM at Civil Hospital, Ludhiana, then we searched Amit Kumar who found and disclosed that when all three of them were returning to his house at Green City, Dhandra Road on the motorcycle of Samma after attending a 'Fair' and were standing on Dhandra Road near Green City, then in an Innova vehicle bearing No. PB-10-EC-0097, 5/6 youth persons came, who encircled us and after catching hold of me and Ujjwal Kumar had started giving beatings. Samma had fled away from the spot. These persons gave beatings to us with sticks, baseballs and after lifting me and Ujjwal had loaded in the above mentioned vehicle and also lifted our motorcycle and after bringing us in Mohalla Roop Nagar, they gave severe beatings to us in a vacant plot, the boys who gave beatings to us, their names as Akhlesh, Arvind sons of Rajinder Pal, Tony son of Sune Pal Narayan, Bharat, Golu, Ramayan, residents of Mohalla Roop Nagar, Dhandra Road, Ludhiana, Sidhant resident of Satjot Nagar, Dheeraj son of Brij bhan, resident of Dev Colony and along with them there was 5/6



other unknown boys, whom I can identify on coming present before me. When these boys had been giving beatings to us, then they had been calling each other by taking their names. With the beatings given to us, blood had been oozing from my head, mouth and nose and blood had also been oozing from the head, mouth and nose of Ujjwal and our condition had become too much deteriorated, due to which Akhlesh and Arvind and other companions after sitting us on a motor cycle Apache bearing No. PB- 10-EV-5161 of white colour and on our motorcycle bearing No. PB-10- HX-3032, Sidhant and Dhiraj had thrown us again in injured condition at Green City, Dhandra Road and had also thrown our motorcycle bearing above mentioned registration number and they of their own by calling Ambulance 108 had sent for treatment at Civil Hospital Ludhiana by saying regarding accident, from where after giving first aid to me, I was sent to home and Ujjwal was admitted. After coming to know about this entire fact, I have been kept on waiting for my brothers and relatives, due to which on account of being odd hours in the night, I could not come to give information. Today I along with my nephew Bhanu Singh son of Arjan Singh had been coming to the police station in order to lodge the information. You have met near the gate of Civil Hospital, Ludhiana. The statement has been got recorded before you, heard, the same is correct. Legal action may be taken against the above mentioned persons. LTI Jaswant Singh above. Statement verified by Bhanu Singh Sd/- Bhanu Singh, Sd/- Harmesh Singh, SI, Incharge Police Post Basant Avenue, Police Station Sadar Ludhiana, dated 25.04.2023. POLICE PROCEEDING: On 24.04.2023, myself SI was present at the police post, then MHC Manjinder Singh told that information has been received from Police Post, Civil Hospital, Ludhiana that the death of Ujjwal son of Jaswant Singh, resident of Dugri, Ludhiana on account of road accident has taken place at Civil Hospital during the course of treatment,



on which myself SI along with SI Sukhwinder Singh No. 2370/Ludhiana, Head Constable Balwinder Singh No. 3393/Ludhiana and PHG Murta Singh No. 20019 in connection with proceeding after reaching at Civil Hospital Ludhiana obtained Ruqa No. CR 9415/23, dated 24.04.2023 and ruqa No. 5246/23, dated 24.04.2023 in respect of Ujjwal and Ruqa No. 9414/23 dated 24.04.2023 in respect of Amit and the dead body of deceased Ujjwal was deposited in the Mortuary at Civil Hospital, on account of non-meeting of heirs, action could not be set into motion, on which today myself SI along with along with SI Sukhwinder Singh No. 2370/Ludhiana, Constable Head Balwinder Singh No. 3393/Ludhiana and PHG Murta Singh No. 20019 reached at the gate of Civil Hospital Ludhiana in connection with the proceeding, where the above mentioned Jaswant Singh along with Bhanu Singh met, who got recorded his above mentioned statement before myself SI, whose statement was got typed according to his version word by word on my private laptop through SI Sukhwinder Singh, after taking print out of which through laser printer, who after hearing his statement, after admitting the same to be correct appended his left thumb impression under his statement and Bhanu Singh verified the statement, to which myself SI attested. From the contents of the statement, the commission of offence under sections 302, 365, 323, 148, 149 IPC is made out. The present statement regarding registration of case against Akhlesh, Arvind sons of Rajinder Pal, Tony son of Sune Pal Narayan, Bharat, Golu, Ramayan, residents of Mohalla Roop Nagar, Dhandra Road, Ludhiana, Sidhant resident of Satjot Nagar, Dheeraj son of Brij bhan, resident of Dev Colony and 5/6 other unknown boys for the above mentioned offence is hereby sent to the police station through PHG Murta Singh No. 20019. After registering the case, file number may be informed. Current special reports may be issued. Information may be given to control room.



Myself SI along with companion officials accompanied with the complainant becomes busy in the investigation of the case. Sd/- Harmesh Singh, SI, Incharge Police Post Basant Avenue, Police Station Sadar Ludhiana. Dated 25.04.2023. Today in the area of Civil Hospital Ludhiana AT 1:25 PM. Today upon receipt of the above mentioned statement at the police station the above mentioned case for the above mentioned offence against Akhlesh, Arvind sons of Rajinder Pal, Tony son of Sune Pal Narayan, Bharat, Golu, Ramayan, residents of Mohalla Roop Nagar, Dhandra Road, Ludhiana, Sidhant resident of Satjot Nagar, Dhiraj son of Brij bhan, resident of Dev Colony and 5/6 unknown boys. Information has been given to the control room. After preparing special reports, the same are being sent through coming CT Surinderpal Singh No. 1943/Ludhiana to the Ld. Area Magistrate as well as Senior Officers. The statement along with copy of FIR through concerned PHG is being sent to the concerned SI at the spot for the purpose of investigation."

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 neither he was named in the present FIR nor any specific role has been attributed to him except recovery of baseball used in the incident. He submits that the petitioner is in custody for almost 1 year and 3 months and 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 20 Prosecution Witnesses, none has 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 1 year, 2 months and 26 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner is also involved in two more FIRs 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 24.07.2023 and charges stands framed on 01.08.2024.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 1 year, 2 months and 26 day, neither he was named in the present FIR nor any specific role has been attributed to him except recovery of baseball used in the 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 24.07.2023 and charges stands framed on 01.08.2024, out of 20 prosecution witnesses, none has 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.

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 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 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>