



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211

CRM-M-35230-2024

DATE OF DECISION: 16.10.2024

KULWINDER SINGH ALIAS MADHAR

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J..S. Thakur, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

This petition has been filed under Section 483 Bhartiya Nagarik Suraksha Sanhita, 2023 for the grant of regular bail in the FIR No.18 Dated 07.02.2022 under sections 392/395/506/201 IPC 1860 & U/s 25, Arms act 1959 Added later on registered At Police Station Kamboj, District Amritsar Rural.

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

'Statement of Vijay Thakur Manager Punjab and Sind Bank Branch Naushehra Kallan Majitha Road Amritsar son of Ball Shri (Illegible) Chand Thakur, resident of ward No. 12 village Darnu Tehsil Dharamsala, District Kangra age 32 years, presently r/o 382 (Illegible) Avenue Amritsar, mobile No. 78886-71521, back area Baba Deep Singh Colony. It is stated that I am serving as a Manager at Punjab and Sind bank Branch Naushehra Ball Kallan Majitha Road Amritsar since 02.07.2021. Today on 07.02.2022 at around 5:50 PM, I was sitting at my seat and the



other staff, Deepak Pal Officer Cash Cabin was performing his duty. Jagroop Singh was deployed at Main gate as a security guard. Charanjit Singh son of Major Singh resident of Naushera is serving in the bank branch as a peon. He was standing near me. In the meantime 5 (Five) youths aged between 25 to 35 years, who had covered their faces, they were holding pistols and they stormed inside the bank. Two youths reached at cash cabin and aimed pistol at Deepakpal and evicted him from the cash cabin. They took the small trunk (chest type) which was kept in the cash cabin and fled from the site. In this box there was a cash amount of around Rs. 5,08,000/- Their accomplices took the DVR of CCTV camera installed in my cabin. While fleeing they threatened us that if you make a noise then we will kill you. We were scared and we remained silent. Later I made a phone call at Helpline. You have reached at site, a legal action be taken. I have heard the statement and it is correct and true. Sd/ Vijay Thakur attested by Satinderpal Singh SI/SHO Police Station Kamboj dated 07.02.2022. Action taken Station:- Today I at Police SI/SHO along with SI Kailash Chander 2699, ASI Palwinder Singh 958, ASI Rawinder Singh, 923, ASI Paramjit Singh 342, ASI Sarwan Singh 638 was on patrolling in connection with search of ante social elements. We were travelling by official vehicle No. PB 65 AX 3919 riven by Ct Gur Rajanbir Singh 1964. We were present at village Nangli. From Police Control Room Amritsar we received a wireless message that at Punjab and Sind Bank Branch Naushehra Majitha Road Amritsar some armed unidentified persons has committed dacoity. We were instructed to reach at site of incidence. 1, SI/SHO along with Police employees reached at aforementioned Punjab and Sind Bank Branch Naushehra Majitha Road Amritsar. There aforementioned Vijay Thakur along with his staff was present. He got his aforementioned statement recorded with me. His statement was recorded and read over to him. He admitted his statement to be correct and signed the same in English. I attested the same. From the statement a case is made out under sections 392, 395, 506 IPC, 25, 54, 59 Arms Act. For registration of FIR the written



statement was sent to the Police Station by hand through ASI Sarwan Singh 638. FIR be registered and No. of the same be intimated. Special reports be prepared and be sent to the Duty Magistrate and the senior police Officers. Police Control Room Amritsar be intimated. Police Control Room be intimated to despatch Finger Print and Dog Squad at site of incidence. I, along with police employees busy in enquiry at site of incidence. Sd/p Satinderpal Singh SI/SHO Police Station Kamboj date 07.02.2022 area: Punjab and Sind Bank Branch Naushehra Majitha Road Amritsar, back area Baba Deep Singh Colony. At 08:00 PM. On receipt of the aforementioned statement at the Police Station an FIR was registered under the aforementioned sections of IPC. Original statement and a copy of FIR handed over to the police employee who brought it to further handing over the same SI/SHO who is busy in enquiry at site of incidence. Special reports prepared and sent to the Area Magistrate and police officers by hand through ASI Tirath Singh 1582. Police Control Room was intimated through wireless message. Report no. 37 concluded time: 09:10 PM.'

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 was arrayed as an accused on the basis of disclosure statement of co-accused Krishanpreet Singh. He submits that the petitioner was arrested while taking him on production warrants while he was in custody in another FIR and he has been in custody for more than 2 years and 7 months. He further submits that 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 16 Prosecution Witnesses, only 3 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 2 years, 7 months and 14 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that serious allegations have been levelled against the petitioner and other co-accused of having committed bank dacoity with the help of pistol. He further submits that the petitioner is a habitual offender as he is involved in other FIRs also, 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 1.10.2022 and charges stands framed on 10.10.2023.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 2 years, 7 months and 14 days 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 1.10.2022 and charges stands framed on 10.10.2023, out of 16 prosecution witnesses, 3 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 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 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 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

16.10.2024
anuradha

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