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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-36097-2024

DATE OF DECISION: 02.08.2024

KULWINDER SINGH ALIAS KALA ...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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 case FIR No.113, dated 21.12.2023, registered under Sections 148/149/307/323/324/326/452/450/201 of the IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Sadar Rupnagar, District Rupnagar.(Sections 324/326/450/201 IPC and Section 192 of Motor Vehicle Act 1988 were added later on during investigation).

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

'Copy of the Statement of Charan Dass so Balak Ram so Tulsi Ram ro Village Bardar PS Sadar Rupnagar District Rupnagar aged about 35 years Mobile No 9815958678 stated that I am the resident of the abovementioned address and doing the work of agriculture Today as per the daily routine at about 615 AM I went to the Temple of Peer Baba in my village which is at a close distance to my house for paying obeisance and when I entered the temple and was paying obeisance in the meantime in the temple Sudagar Singh son of



Mehar Singh armed with country made pistol in his hand along with Kulwinder Singh Kala son of Hem Raj armed with uncovered sword Kirpaan in his hand and after them Harpreet Singh Happy son of Ram Lok who was holding in his hand iron Sickel came All the above persons are the residents of my village Then Sudagar Singh while pointing his pistol at me told me by stating that run where you intend to run In the mean time Pollu Ram son of Bhagat Ram resident of Bardar standing near the gate of the temple was armed with iron sickle raised Lalkara by stating that I should not go K4 r Scott free who all of them in connivance with each other started beating me Then Kulwinder Singh gave twothree Kirpan blows on my right leg with the Kirpan held by him in his hand and when I tried to flee in order to save myself then Pollu Ram who was present at the gate gave sickle blow which hit on my left arm bicep I ran towards my house and entered the gate and closed the gate then one Fortunercar colour white and Maruti Car bearing No PB12H6788 of white colour came at the gate of my house from which Kulwinder Singh son of Karnail Singh Kuku Singh son of Maal Singh Satnam Singh son of Sohan Singh all residents of village Haripur alighted who were armed with Kirpans and Kulwinder son of Karnail Singh armed with revolver along with 78 other unknown persons who were also armed with iron rods and dandas who entered into my house by jumping the wall I raised hue and cry My wife Saroj raised hue from the roof of my house and when I tried to flee I fell down Then Harpreet Singh son of Happy son of Ram lok resident of Bardar with an intention to kill me hit the sharp pointed edge of Kirpan on the left side of my arm and while rotating the Kirpan he pulled out the same Then Kulwinder Singh Kala Ro Bardar with an intention to kill me gave Kirpan blow which hit on the back side of my head All the abovenamed persons said to each other that he should not be kept alive When I was lying on the ground the abovenamed accused persons and their companions caused more injuries on me Then after



hearing the hue and cries Sudagar Singh son of Sucha Singh and my nephew Onkar Singh son of Hakam Singh from the village came at the spot who have also raised hue and cry Then all the abovesaid persons by seeing the people gathering and thought of me as dead fled away from the spot with their respective weapons in their respective vehicles Then Sudagar Singh and my nephew Onkar Singh brought me in 6 K injured condition to Civil Hospital Rupnagar for treatment in my car where keeping in view my serious condition I was referred to GMCH Sector32 Chandigarh by the doctor where my treatment is going on The abovesaid persons have caused serious injuries to me by attacking me with the intention to kill Appropriate Legal Action be taken against them The statement has been written and read over and found correct Sd Chrna'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that no offence under Section 307 has been made out against the petitioner as none of the injury suffered by the victim has been declared dangerous to life and co-accused-Sudagar Singh aimed pistol at the complainant, who has not been granted bail by this Court as is evident from the order dated 11.07.2024 passed in **CRM-M-20289-2024**. He submits that the antecedents of the petitioner are clean, therefore, no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial will take long time wherein out of total 17 prosecution witnesses, none has been examined till date.

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 7 months and 2 days.

Learned State Counsel on instructions from Investigating officer opposes the prayer for grant of regular bail on the ground that the injuries caused by the petitioner are grievous in nature.

On behalf of the complainant

Learned counsel for the complainant vehemently opposes the prayer stating that 6 goons along with 7 other unknown persons attacked the complainant and out of them only 3 have been arrested so far and remaining are still at large. If at this stage, they are granted bail, the complainant's life and liberty would be endangered and even the complainant has not been examined till now before the Trial Court. He further submits that the main injury has been attributed to the petitioner which is on the back side of the head causing fracture in parietal temporal bone.

4. Analysis

Having regard to the fact that whatsoever role has been attributed to the petitioner for causing injuries, the petitioner has already incarcerated for more than 7 months by now and challan stands presented on 21.03.2024, meaning thereby the investigation is complete, therefore, no fruitful purpose would be served by keeping the petitioner behind the bars.

As far as the contention raised by counsel for the complainant is concerned, this Court has already discussed qua the fact that though the injuries caused by the petitioner have been declared grievous in nature and admittedly Section 307 is not attracted which



can at best be made out against co-accused Sudagar Singh who has already been denied the concession of bail and the petitioner has also found support on this fact from the medical report wherein none of the injury has been found dangerous to life.

As far as the non-examination of the complainant in the witness box is concerned, this Court is conscious of the basic 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.

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 7 month and 2 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 21.03.2024 and charges stands framed on 06.06.2024 and out of 17 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.



Reliance can be made 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.”

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

02.08.2024
anuradha

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