



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

CRM-M-36503-2024 (O&M)
Date of Decision: August 06, 2024

MOHD. SHEHBAZ @ SHEHBAZ

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parvez Akhtar Dhaliwal, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

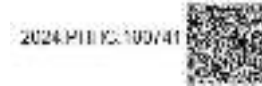
The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.34, dated 05.04.2021, under Sections 302, 148, 149 of IPC, registered at Police Station Sadar Ahmedgarh District Sangrur now District Malerkotla.

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

“Contents: "It is at this time a statement of wife of Late Joginder Singh resident of Matoi aged 30years mob No9915708650 has been addressed to I SI SHO Amandeep Kaur 32 JRT Sadar for of FIR under Section



302, 148, 149 of IPC against Surjit Singh son of Balkar Singh Sethi son of Surjit Singh Sukho wife of Surjit Singh Meet Gurmeet sons of Balkar Singh of Meet Singh residents of Matoi Shehbaz son of Dara Khan of Rodiwal Laddi son of Naiti resident of Chuhan-ke now tenant at Matoi has been received through PHG Jagtar Singh 48313 Which is as under Statement of Kashmiro wife of late Joginder Singh resident of Matoi aged 30years, mobile No. 9915708650. It is stated that I am resident of above mentioned address and I am a labourer On 02.04.2021 my husband Joginder Singh was going to Malerkotla from home on foot with regard to work at about 9:00 AM then on the way he took lift on a motorcycle from one passerby When he reached about 100 meter ahead of our Flour mill on the road going from our village to Malerkotla then wife of Surjit Singh resident of Matoi stopped the by giving signal to the bike driver and had brought down my husband Joginder Singh from motorcycle. At that time Surjit son of Balkar Singh Sethi son of Surjit Singh came there and they gave beating to my husband. Thereafter they all three brought my husband Joginder Singh to the house of Surjit. At the house of Surjit Singh, Meet Singh son of Balkar Singh, Pinki wife of Meet Singh Gurmeet Singh son of Balkar Singh All residents of Matoi and Laddi son of Neti, resident of Chauhan-ke now tenant at Meet Singh resident of Matoi and Shehbaj son of Dara Khan resident of village Rodiwal were sitting When Surjit Singh brought my husband Joginder Singh then they all gave beating to my husband with dandas, sticks with an intention to kill him due to which he suffered lots of injuries on his body. All this was told by my husband Joginder Singh on return to home on 03.04.2021 I took my husband Joginder Singh to Civil Hospital Ahmedgarh at about 5:00 PM and they

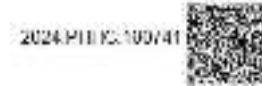


referred my husband to Civil Hospital Malerkotla due to lots of injuries. Thereafter I got my husband admitted at CH Malerkotla and his treatment was going on there, all the above said persons gave beatings to my husband with sticks and danda with intention to kill and he succumbed to injuries on 04.04.2021 at around 11:00/11:30 at night. My husband has been murdered by Surjit Singh son of Balkar Singh Sethi son of Surjit Singh Sukho wife of Surjit Singh, Meet, Gurmeet sons of Balkar Singh Pinky wife of Meet Singh residents of Matoi Shehbaz son of Dara Khan resident of Rodiwal Laddi son of Naiti resident of Chauhan Ke now tenant at Matoi by giving injuries with sticks with an intention to kill legal action may be taken against these persons. Today I along with my dever Manjit Singh son of Bir Singh have met you at the outer gate of Civil Hospital Malerkotla and has got recorded my statement to you appropriate legal action may be taken against them. RTI Kashmiro, endorsed Manjit Singh son of Bir Singh, resident of Matoi, attested SD/ Amandeep, Kaur SI/SHO, P.S. Sadar Ahmedgarh. Dated 05.04.2021.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the instant FIR and vague allegations are levelled against him. The petitioner has not caused any injury and not participated in any crime. He further contends that neither any injury has been attributed to him nor he has participated in any crime. Moreover, there is no eye witness to the alleged occurrence of the offence. The petitioner



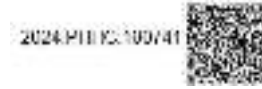
was arrested on 11.04.2021 and since then he is in custody. Challan has already been presented and its disposal will take time.

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 allegations against the petitioner are serious in nature and delay of 03 days in lodging the FIR itself is no ground to grant the concession of bail. He further submits that petitioner is also involved in another case i.e. FIR No.138 dated 15.07.2023 under Section 52-A Prison Act, 1894, registered at Police Station City 1 Sangrur wherein he stands convicted and has already completed the sentence awarded to him in that case.

4. **Analysis**

From the above case it can be culled out that the role attributed to the petitioner is that petitioner by forming an unlawful assembly with his co-accused Surjit Singh and others armed with deadly weapons i.e. danda and sticks gave severe beatings to Joginder Singh (husband of the complainant) who succumbed to his injuries during treatment in Civil Hospital, Malerkotla, however, the said fact has been controverted by the learned counsel for the petitioner stating that the petitioner has not caused any injury and not participated in commissioning of offence, moreso, the petitioner is behind the bars for last 03 years, 03 months and 21 days; added with the fact that challan stands presented on 08.07.2021, charges have been framed on 12.08.2021 and out of total 21 prosecution witnesses, only 12



witnesses have been examined till date, which is suffice enough 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 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.

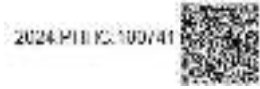
5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for



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.”



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 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.

(SANDEEP MOUDGIL)
JUDGE

06.08.2024
Sangeeta

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