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

CRM-M-37083-2024

Date of Decision: August 23, 2024

SANDEEP SINGH

.....Petitioner(s)

V/S

STATE OF HARYANA

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanpreet Sandhu, Advocate
for the petitioner.

Mr. B.S. Virk, Senior 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.145, dated 03.05.2021 under Sections 148, 149, 323, 324, 506 of IPC, 1860, (Section 302, 120-B, 195-A, 34 IPC added later on) registered at Police Station Nissing, District Karnal, Haryana.

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

“Copy of statement of Azad Singh son of Baghel Singh, caste Jat Sikh, resident of Baalu and aged 28 years, mobile No. 97295-66520. Stated that I am resident of



above said address and work as an agriculturist. 2/3 days ago from today, Kuldeep Kaur mother of Sandeep Singh and his brother-in-law (Jija) Manjit Singh had threatened to kill me and my uncle (Tau) Arjan Singh. ON 13 April. Sukha Singh son of Kala Singh had threatened that we are with Sandeep and will kill you. Today on 3.5.2021 at 7.30 AM in morning when my father went to filed sot cut the grass on motorcycle. I and my uncle (Tau) were going behind to field on buggy. When we reached near our field, we were at the distance of 1 acre from our field that in the meantime one motorcycle and on car stopped in front of our field and on which Sandeep Singh son of Mulla Singh Ja Sikh resident of Baalu, Mehtab Singh son of Jagtar Singh resident of Bahaloipur, Gulab Singh son of Gurmukh Singh Bahalolpur, Lakha Singh son of Kishna resident of Bahalolpur, Sukha Singh son of Kala Singh resident of Baalu and Gurlal Singh son of Resham Singh Dera Baalu Bajeeda Road came from the other road and Varinder Singh son of Sukha Singh resident of Umedpur Police Station Siwan came. All were carrying swords, gandasee and sticks in their hands and on reaching, while we were looking, started beating my father. I and my uncle ran there and we raised hue and cry "Mar Diya, Mar Diya That while looking at us, they were saying that we hac to kill him, that he got saved and my father has got injumes on his both the legs, head and hands. We had a case litigation against Sandeep Singh in which Sandeep Singh got convicted in order to effect compromise in these cases, they pressurize us again and again. Sandeep Singh resident of Baalu, Mehtab Singh, Gulab Singh, Varinder Singh, Lakha Singh, Sukha Singh, Gurlal Singh above mentioned have unlawfully inflicted injuries upon my father. Legal action be taken against them. Statement recorded, which was heard and is



*correct. Sd/- Aazad Singh attested Parveen ASI, P.S.
Nissing dated 03.05.2021.”*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as there are two different stories i.e. as per FIR, complainant named 07 persons with complete address and parentage and one motorcycle and one car being used at the time of incident but as per prosecution story four persons came on two motorcycles. It is submitted that seven persons named in the FIR have been declared innocent which means that versions of the complainant and the brother of deceased are false and not reliable. The CCTV footage upon which prosecution is relying is not of the alleged place of occurrence. It is further submitted on behalf of the petitioner that his case is at parity with the other co-accused, namely, Mehtab Singh, who has been granted the concession of regular bail by this Court vide order dated 19.04.2024 passed in CRM-M-62658-2023 (Annexure P-16).

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, as per the same the petitioner is behind the bars for last 03 years 03 months and 04 days. Learned State counsel also points out that there are 07 other pending cases against the petitioner which are as under:-



1. FIR No.324/2018 under Sections 323, 324, 452, 506, 34 IPC registered at Police Station Nissing Karnal.
2. FIR No.299/2022 under Sections 406, 420 120-B, 467, 468, 471 of IPC registered at Police Station Sector 32/33, Karnal.
3. FIR No.75/2019 under Sections 406, 420, 467, 468, 471, 120-B IPC, registered at Police Station Civil Lines Karnal, Karnal.
4. Court Complaint No.CS/979/2020 dated N/A under Section not shown, Police Station Karnal.
5. FIR No.120/2017 under Sections 323, 34, 506, 325 IPC, registered at Police Station Nissing Karnal.
6. FIR No.369/2013 dated 18.12.2013 under Sections 323, 427, 452, 506 IPC registered at Police Station Nissing Karnal.
7. FIR No.478/2019 under Sections 323, 34, 365, 379-B, 506 IPC registered at Police Station Civil Lines Karnal, Karnal.

He seeks dismissal of the instant petition on the ground that petitioner is involved in seven other cases meaning thereby he is a habitual offender, but is not in a position to controvert the fact that the co-accused mentioned by the counsel for the petitioner have been granted the concession of regular bail.

On behalf of the complainant

Mr. G.S. Sandhu, Advocate, puts in appearance on behalf of the complainant and has filed his Power of Attorney in Court, which is taken on record.



4. **Analysis**

From the above case it can be culled out that the petitioner is behind the bars for last 03 years, 03 months and 04 days; the petitioner is at parity with the other co-accused, namely, Mehtab Singh, who has been granted the concession of regular bail by this Court vide dated 19.04.2024 (Annexure P-16) added to the fact that challan stands presented on 26.07.2021, charges having been framed on 22.02.2024 and out of total 45 prosecution witnesses, only 01 witness has been examined till date, which is sufficient for this Court to infer that the conclusion of trial will take a considerable 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

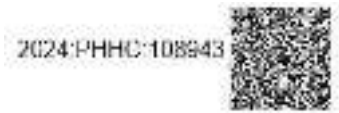


the provision for bail is almost a century old, going back to colonial days.

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 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 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.

(SANDEEP MOUDGIL)
JUDGE

23.08.2024
Sangeeta

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