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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-37167-2024

Date of Decision: 23.09.2024

ASHWANI KUMAR AND ANR  
Vs.

...Petitioners

STATE OF PUNJAB

...Respondents

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.R. Punia, Advocate for the petitioners.

Mr. Jaspal Singh Guru, AAG Punjab.

SANDEEP MOUDGIL, J. (Oral)1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. seeking concession of grant of regular bail to the present petitioners in case No. 137 dated 12.11.2023 under sections 323, 307, 148,149, IPC and Sections 25 and 27 of the Arms Act registered at Police Station Jodhewal, District Ludhiana, (Annexure P-1)

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

*"Stated that I am resident of above address and working with Corporation Ludhiana as Safai Sewak. We are two brothers and the elder one and my younger brother is Mani. On 11.11.2023 at about 9.00 PM I and my Mani and my cousin brother Akash and Deepak went to purchase clothes at Rahon Road Ludhiana. My cousin brother Sumit used to work on the cloth shop, when we are seeing the clothes and one person*



*working in the shop namely Mandy said to my cousin Sumit that you don't spread the clothes and said that they are all my family members, then Mandy abused my cousin. And due to this altercation took place between them and the owner of the shop told Mandy to sit in the shop and we all were sent out of the shop and on hearing the mobile outside the shop the present councilor came at the spot and he pacified both the parties, and told us that tomorrow both the parties will be heard and we all went to our houses. At about 10:00PM Ashwani, Lukcy Ghulla both son of Billa r/o Indra Colony Ludhiana, Mandy, Lucky and 10 persons alongwith them came in our street and started abusing out side our house and we came out and these persons having kirpan, empty bottles, datar, danda in their hands and having bricks in their hands and gave us threats and I can recognized them if comes in my front and fired a shot on the left of the chest of my father and my father fell on the ground and after arranging a vehicle he took him to CMC Ludhiana and got admitted. Action be taken against the accused persons”*

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioners contends that though the petitioners have been named in the instant FIR by the complainant but they did not cause any fire arm injury to the father of the complainant. He further contends with the intervention of the respectables of the society, the dispute stands settled between the parties by way of compromise. Even the injured who has suffered fire arm injury through some unknown



person in the mob do not want to pursue the case any further.

**On behalf of the State**

On the other hand, learned State counsel has produced the custody certificates of the petitioners today in Court, which are taken on record. He seeks dismissal of the instant petition on the ground that though no specific injury has been attributed to the petitioners but there is one injured who got fire arm injury and the petitioners have actively participated along with the mob in commissioning of the offences alleged therein. However, investigation has been completed and the challan has been presented on 14.08.2024. He fairly submits that custodial interrogation of the petitioners is not required.

4. **Analysis**

Be that as it may, considering the custody period i.e. 05 months and 20 days; 04 months 21 days for which the petitioners have suffered incarceration respectively; in addition to the fact that investigation is complete, challan stands presented to Court on 18.05.2024, charges have not been framed yet which is suffice 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 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 basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure as 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 petitioners are hereby directed to be released on regular bail on their 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

23.09.2024

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