



213

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

CRM-M-37010-2024

Date of Decision: September 25, 2024

BEANT SINGH**....Petitioner(s)****VERSUS****STATE OF PUNJAB****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Kuldip Singh, Advocate
for the petitioner.

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

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

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking the concession of regular bail for the petitioner in FIR No.30 dated 16.05.2024, under Section 411 IPC (Section 379-B IPC and Section 25 of Arms Act added later on) registered at Police Station GRP Bathinda.

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

‘Original ruqa-Jai Hind. Station House Officer. It in submitted that today on 16.05.2024 at about 8:30 PM, 1 LR/ASI along with Gurwinder Singh 266, SCT Gurwinder Singh 248 (along with laptop printer), SCT Simranjit Singh 332 has left in government vehicle in connection with checking of suspicious persons and investigation from smugglers. CT Rajinder Kumar NR/003019/ RPF CPDS, PHG Raj Kumar 6894 has been accompanied from Mamura Duty Platform and during checking, I was present near railway ground at Railway Station,



Bathinda then secret informer gave the signal to me LR/ASI and told that one shorn haired person whose name is Beant Singh son of Bhola Singh resident of village Tapa Khera, District Sri. Muktsar Sahib who has Muslim fashion, who has worn blue jeans and maroon coloured t-shirt and is carrying white coloured cloth (Parna). Who is carrying the stolen mobile phones from railway. Now he is sitting near the electricity pole where emergency crane is standing near Peer Di Mazar on seeing the opportunity of selling the mobile phone. If raid be conducted now then Beant Singh can be apprehended along with stolen mobile phones. Due to information being true and trustworthy, accused Beant Singh has committed the offence u/s 411 IPC for keeping stolen mobile phone in his possession. Therefore, ruqa is being sent to police station through PHG Raj Kumar 6894 for registration of case. I LR/ASI along with fellow officials left for Peer Ki Mazar for conducting the raid to the accused. In the area of Kilometer No.296/31 installed near electricity pole near the place where emergency crane is standing, Railway Station Bathinda. Sd/- Shavinder Kumar LR/ASI/887 PS GRP Bathinda, dated 16.05.2024 at 9:25 PM. Police proceedings: In reference to Rapat No.22, Roznamcha, one ruqa from LR/SI Shavinder Kumar 887 PS GRP Bathinda for recovery of stolen mobile phones against Beant Singh son of Bhola Singh, resident of village Tapa Khera, District Sri. Muktsar Sahib through PHG Raj Kumar 6894 has been received at police station. Upon finding the offence u/s 411 IPC to be conducted from the ruqa, after registering the case, case file is being sent to LR/ASI/887 through PHG/6894 who is busy in investigation on the spot. Higher officials and control room GRP Patiala is being intimated through telephone. Closing Rapat No.23 in Roznamcha today.'

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 he was neither present at the place of occurrence nor has committed any offence of snatching. He submits that



only one mobile phone has been recovered from the petitioner. He further submits that the petitioner is in custody since 16.05.2024.

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 almost 04 months 07 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail asserting that the petitioner is involved in nine other cases also. He informs the Court that in the present FIR challan stands presented on 15.07.2024 but charges are yet to be framed.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 04 months 07 days and nothing is to be recovered from the present petitioner 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, the challan stands presented on 15.07.2024 but charges are yet to be framed, there are total 09 prosecution witnesses, out of none has been examined, 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 Nimesh 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 the 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 concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is hereby 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.

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

25.09.2024
Sangeeta

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