



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

CRA-S-2684-2024
Date of Decision: August 09, 2024

SAKSHAM VESASI ALIAS SAKSHAM
....Appellant(s)

VERSUS

STATE OF HARYANA AND ANR
....Respondent(s)

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Deipa Singh, Advocate
for the appellant.

Mr. Surender Singh Pannu, Addl. A.G. Haryana.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This appeal has been preferred in FIR No.35, dated 24.02.2024, under Sections 148/149/307/323/427/506/120-B/34 of IPC, and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Sector 20, Panchkula, for setting aside the order dated 08.07.2024 vide which the petition for grant of regular bail to the appellant has been dismissed.



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

“Statement of Ratul Birla, son of Shri Rajeev Birla, resident of Flat No.401, GH-93, Sector-20, Panchkula, aged 18 years Mobile No.7973565645, 9988979522. Stated that I am resident of above address and is a first year student of BCA in SD College Sector-32, Chandigarh. We are two brothers. My father works in FCI in Orissa and my mother Sushila is a government teacher in Punjab. I have previously studied in The Gurukul School, Sector 20, Panchkula till class 10th and a girl named Chhavi, resident of Zirakpur. also studied in my school. We were good friends. Sometimes we have talks. Chhavi is also a friend of a boy named Saksham who lives in my society and lives in Flat No.502. Saksham called me yesterday on 23.02.2024 at around 7 pm to meet me in the parking of BLISS Hospital Sector-20, Panchkula. When I reached there. I saw that Saksham was already standing in the parking alongwith 15-20 boys and Saksham was holding a wooden stick in his hand. He said to me that why do you talk to Chhavi and stop talking to her. So I said that there is nothing like that. I only occasionally talk to Chhavi as a friend, then Saksham started hitting me with a stick and other boys started kicking and slapping me and boy named Agrim started making videos on the phone. After that, I freed myself from there and reached Sun City Parikrama market and from there I called Saksham's father Mohit and told him that Saksham was assaulting me along with 15-20 boys. From which I am running away and I am in the market of Sun City. You call Saksham and make him understand to not to assault me. After that I called my friends Keshav and Harsh and told them everything and asked them to save me from Saksham. Before this, my



friends Vansh and Varun were coming to meet me in Sector-20, Panchkula. I also called them to Sun City Parikrama market. Then we left from there in my friend Varun's Santro car and when we reached near the vacant ground at 20 Panelikula where a vegetable market was situated. We stopped there so that Saksham could calm down. But then Saksham's friend Agrim saw us there and then Saksham also came there in a car and bike along with 8-10 other boys. Then they surrounded us there too and Saksham started beating me with sticks and also broke the glass of my friend Varun's car. After that, we ran towards my society to save our lives and when we reached the main gate of the society, Saksham's father Mohit was already standing at the gate. Seeing this, we stopped and got down from the car and asked him to calm down Saksham and then Saksham also reached there with his friends and instigated his father and joined him and Saksham's father Mohit took a stick from the guard room. He started beating me vigorously and I said, 'Uncle, please listen to me first' but he did not listen to me and continued to beat me. At that time my mother had also come at the same spot and she tried to free me and started pleading with folded hands in front of Mohit uncle but he continued to beat me. Then Saksham attacked me from behind with the intention of hitting me on the neck, head and waist with a glass bottle and his friends attacked me repeatedly with iron punches in their hands. Due to which I started bleeding profusely and my mother was very frightened and fainted on the spot. A large crowd of people had gathered there and Saksham left the place after saying this to my friends that today you somehow survived, but next time we will kill you. With great difficulty the mob freed me from those people and took me to Alchemist Hospital. Now I am undergoing treatment here Saksham, his father Mohit and 15-20



other boys together tried to kill me twice by chasing and surrounding me. The strictest legal action should be taken against all of them and justice should be provided to me.”

3. **Contentions**

On behalf of the appellant

Learned counsel for the appellant would submit that there was an altercation among the two students studying in senior secondary school and one of them was to appear in the final examinations. This altercation took place with the complainant-Ratul Birla who is also a student of BCA in SD College Sector 32, Chandigarh and resides in the same society as of the appellant and the issue crept out of some altercation probably qua one girl and the allegations levelled particularly under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, are concoction of story having no truth in it.

On behalf of the State

On having advance notice, learned State counsel on instructions from Inspector Bacchu Singh, P.S. Sector 20, Panchkula, submits that Section 307 IPC has already been deleted which is not made part of the challan presented on 29.07.2024.

As far as provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are concerned, they were added later on 14.03.2024 and Section 34, 324, 201 IPC were added at the time of filing of challan after completion of investigation in the FIR.

**On behalf of the complainant**

At this stage, Mr. Sanjeev Kumar Birla, Advocate, puts in appearance on behalf of respondent No.2-complainant and has filed his Power of Attorney in Court, which is taken on record.

Learned counsel for the complainant opposes the concession of regular bail to the appellant asserting that medical opinion as well as conduct of the investigating agency has been questioned in CRA-S-2128-2024.

Learned counsel for the appellant would though clarify that the said appeal stands disposed of vide order dated 03.07.2024 which has also been reproduced hereinbelow:-

“The instant appeal has been preferred by the appellant against the order dated 13.05.2024 passed by learned Additional Sessions Judge, District Panchkula whereby his petition for grant of anticipatory bail has been dismissed.

After arguing for some time, learned counsel for the appellant prays for withdrawal of the present petition since the appellant has already been arrested.

Prayer is accepted.

Dismissed as withdrawn.”

Learned counsel for the complainant further vehemently presses into argument that if the appellant is released on bail he will lose faith in the doctors, in the police department as well as the whole administrative system of Haryana. The circumstantial evidence are more than enough to depict the callousness of the appellant which are not being taken into consideration. Learned counsel for the complainant also submits and requests for making an observation in order that he will lose faith in the judiciary as well, as the



order of coordinate bench has not been taken into consideration while granting bail to the appellant.

Countering the aforesaid argument, learned State counsel submits that the co-accused has already been granted bail in CRA-2361-2024 vide order dated 08.07.2024.

4. **Analysis**

Be that as it may, this Court having regard to the facts as has been culled out in the FIR and the submissions made on behalf of respective counsels for the parties is of the considered view that at the time of filing of challan, Section 307 IPC stands deleted whereas Section 324 and 201 IPC have been added along with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, wherein the appellant was arrested on 31.05.2024 and no recovery whatsoever has been effected from him connecting the commissioning of offence. Since no incriminating material has been found and appellant is already incarcerated for more than 2 ½ months therefore no useful purpose would be served by keeping in the appellant behind the bars.

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.

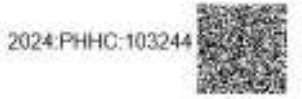
4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an 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 discussions made hereinabove, the appellant 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 appeal 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

09.08.2024
Sangeeta

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