



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-39320-2024

DATE OF DECISION: 22.08.2024

NAVEEN KUMAR

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Sethi, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the third time seeking the concession for the grant of regular bail to the petitioner in FIR No.88 dated 29.05.2020, under Sections 302 read with Section 109 IPC and Sections 25/54/59 of Arms Act, 1959 registered at Police Station New Colony, District Gurgaon.

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

‘To SHO Sahib Thanu New Colony Gurugram sir ji request is that I Jyoti Dureja age 30 years wife of shri Vikas Dureja Sio Ramchandra Dureja resident of house no. 741/13 street no. 13, Baldev Nagar Gurugram, My husband Vikas Dureja used to work of mobile repair, sale and purchase. My husband had to come to Delhi for his mobile business. My husband has a car no. HR 26DH-0143 Make Creta White Color for Carrying out his business or in connection with his daily



work with this car Creta no. HR-26DH-0143 at around 2 O' Clock today on 29-5-20 afternoon went from his house then at about 2-1/2 -3, I got information from my known that your husband Vikas in Feroze Gandhi Colony had been shot, When I reached the spot Salong with my family members, I saw that my husband Vikas Dureja was lying on the driver's seat in a blood-soaked condition inside the vehicle, whose body was shot and there was a mirror in the front of the car on the window of the conductor's side seat, there were many bullet marks on the car at other places as well. My husband was brought to the hospital with the help of police and other people, where there was a lot of crowd, my husband Vikas Dureja died on the way to the hospital. And in Government Hospital Gurugram, my husband Vikas Dureja was declared dead. My husband Shri Vikas Dureja, Age 38 Years, S/o Shri Ramchandra was killed through shot by unknown person of unknown address. Please take the strictest action against persons killing my husband. My husband Shri Vikas Dureja, S/o Shri Ramchandra Dureja Age 38 Years, Jyoti Date 29-5-2020 Mobile no. 9953465789. on police proceeding on received information from control room Gurugram that in Feroze Gandhi Colony in Kali Mata Wali Gali, on which information was received from control room on dated 29-5-20 at about 2:40 PM from Manager Police Station ASI Sant Kumar 276/GGM HC Sanjay 853/GGM, Saurabh 4759/GGM Gunman & Govt. Car No. HR26DW-6426 whose driver is C. Krishan Kumar 2104 reached on the spot. where a large crowd was gathering, the incident was reported to the higher authorities and the seen of crime was informed reaching the spot. During the inspection of the incident site photographed, 7.62 X 2.5 in empty shells and 311-9X19 empty 11 shells and one empty shell with 1 empty shell on which 9mm written, which were found on the basis of evidence, through receipt of separate cloth, Four seals were sewn from RK take in possession, but Jyoti, the wife of the deceased Vikas Dureja, along with her family members



Dewan Dureja resident Jyoti Park and father-in-law Ram Chander, presented the above complaint, in the essence of the complaint, crime occurrence under section 302 IPC, 25-54-59.A. ACT. A written article is being sent to the police station through HC Sanjay 853, after registering a special report and sent to the service of higher officers and area / duty magistrate, I research on the spot including staff. I am busy. So, Firoz Gandhi Colony Manager Officer Police Station New Colony Gurugram Date 29-5-2020 Time 7-20pm at Police Station: On receipt of the above article at the police station, prosecution no. 88, Dated 29-05-2020 at 7-20 PM Police Station New Colony Gurugram Registered No. 88 Dated 29-05- 2020 U/s 302 IPC 25-54-59 A ACT and prepared a copy by computer. Whose special report will be sent to the service through E-mail to Elaq Magistrate and higher officials, copy is being sent to Police with original article by HC Sanjay No. 853/GGM to Police Station Manager on spot. This charge has been registered in the presence of Si Ravindra.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and was named on the basis of the alleged disclosure statement of the petitioner in another FIR No. 234 dated 10.06.2020 under Sections 25(1-B)(a) of the Arms Act at P.S. Sector-10, Gurugram in which he has already been acquitted. He further submits that the petitioner was not named in the instant FIR and the only allegation against him is that he had allegedly supplied two pistols and cartridges to co-accused Vikas alias Malya to commit the alleged offence. The contention raised by



counsel for the petitioner is that the allegation with regard to offence under Section 302 IPC and with regard to the gun injuries have not been attributed to the petitioner. His assertion is that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 39 Prosecution Witnesses, none has been examined so far.

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 3 years, 6 months and 6 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner is involved in many other FIRs but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 04.09.2020 and 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. 3 years, 6 months and 6 days and was not named in the instant FIR, the only allegation against him was that he had allegedly supplied two pistols and cartridges to co-accused Vikas alias Malya to commit the alleged offence added with the fact that the allegation with regard to offence under Section 302 IPC and with regard to the gun injuries have not



been attributed to the petitioner. 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, challan stands presented on 04.09.2020 charges are yet to be framed which shows an inordinate delay in conducting the trial, out of 39 prosecution witnesses, none has been examined so far 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 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 fundamental law that right to speedy trial is a part of reasonable,



fair and just procedure guaranteed 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 aforesaid discussions made hereinabove, the petitioner is 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.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

Further, the Registrar (Judicial) of this Court is directed to call upon the report from the concerned Judicial officer at Gurugram who is conducting the trial, as to why the trial has not moved at an appropriate speed wherein after filing of challan on 04.09.2020, charges are yet to be framed.

(SANDEEP MOUDGIL)
JUDGE

22.08.2024
anuradha

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