



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

218

CRM-M-38121-2024

DATE OF DECISION: 12.08.2024

MALKIT SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rahul Sharma, Advocate for the petitioner(s).  
Mr. J.S. Rattu, DAG, Punjab.

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SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.07 dated 14.02.2024, under Sections 379-B IPC, (Sections 323/411/201/120-B IPC added later on) registered at Police Station Kheri Naud Singh, District Fatehgarh Sahib.

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

*‘Copy of statement, "stated that 1 Gautam Kumar alias Chintu son of Harpal Singh resident of village Nambagala police station Kheri Naud Singh District Fatehgarh Sahib aged about 28 years mobile no. 08780-00895 stated that I am the resident of the said address and Data Entry Operator at Markfed Khamanon Dana Mandi I have been working for about 2% (two and a half years) from 09:00 am to 05:00 pm and after 05:00 pm I have worked as a laborer for 5/6 months in L&T Finance Company. On 10.022024, I left Markfed Khamanu*



*every day and reached near Bilaspur Road branch of L&T Finance Company. Where from 8 field officer (FLO) took cash from them and was putting the entry on the phone and put the cash in my bag. Total of the amount can be found from my mobile. Therafter, at about 9.10 PM I from my office at Bilaspur road Khamanu started going towards my village on my motorcycle number PB-23-S-6576 marks spelender When I cross the village Bilaspur and reached the next crossing, then at 09:30 PM, a motorcycle came behind me which was driven by 2 unidentified persons. They hit the back of my head with iron dah. Then I fell down in the potato field along with the motorcycle due to the impact. Then they again they gave iron dah blow then the other person also gave a baseball blow on my face, which hit me on the left eye on my forehead. I started running alongwith my bag and they snatched my bag containing cash and took out the mobile phone my pocket and broke the phone. In that mobile mine and my company's data is stored, then both the unidentified persons took my bag and ran away on their motorcycle towards Bilaspur. I got up in the field and came to the road. Where Sandip Kumar of my village came to the Bilaspur side who is working on the pump. Who admitted me to the government hospital for treatment. Where I was sent to Government Hospital 6 phase Mohali. Where my CT scan was done and it was sent to Sector 32 Chandigarh. Where I was discharged at 05.30 AM. Persons unknown have attacked me. They had tied cloth on their head, the motorcycle brand splander. Today I wrote my statement to you in the presence of my brother Dimple Kumar. Which is read over and it is correct. Sd/- Gautam Sd/- Dimple Kumar 98964-67410.'*

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioner has argued that the



petitioner has been falsely implicated in this case as he has no concern with the alleged crime. He submits that no recovery has been effected from the petitioner. He has further argued that the antecedents of the petitioner are clean, meaning thereby he is a first time offender and is in custody for more than 5 months. He submits 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 24 Prosecution Witnesses, only 6 have 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 5 months and 5 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the allegations levelled against the petitioner are serious in nature and thus, should not be enlarged on regular bail as his release may hamper the trial proceedings. He informs the Court that in the instant FIR challan stands presented on 22.04.2024 and charges stands framed on 16.05.2024.

#### **4. Analysis**

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 5 months and 5 days, no recovery has been effected from the 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, challan stands presented on 22.04.2024 and charges stands framed on



16.05.2024, out of 24 prosecution witnesses, only 6 have 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. Moreso, complainant has turned hostile and have refused to identify the petitioner.

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 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.

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/her 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.

(SANDEEP MOUDGIL)  
JUDGE

12.08.2024  
anuradha

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|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |