



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

221

CRM-M-38211-2024

DATE OF DECISION: 12.08.2024

UTTAM ALIAS SURESH KUMAR

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Hardeep Singh, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 akin to erstwhile Section 439 Cr.P.C. has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.69 dated 25.02.2023, under Sections 120-B, 147, 148, 149, 302, 323, 342 IPC, 1860, registered at Police Station Bhuna, District Fatehabad.

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

‘Statement of Suman wife of Kuldeep Singh son of Nathuram resident of Chobara age 30 years. M.No.97283-56325 stated that I am the resident of abovesaid address and I am housewife. I have two sons and one daughter. My husband Kuldeep Singh son of Nathuram resident of Chobara was come at his home from field at his motor cycle CD Deluxe colour black. When, at about 11:00 AM, my husband Kuldeep Singh



reached in front of the house of Shishpal son of Harnarayan resident of Chobara then Shishpal son of Harnarayan then Shishpal son of Harnarayan, Salinder son of Shishpal, Uttam @Suresh Kumar son of Shishpal, Satbir son of Nathuram and Sandeep son of Satbir resident of Chobara and Aakash resident of Mirjapur armed with lathi, kassi, binde and bricks came out from the house of Shishpal son of Harnarayan and have taken my husband Kuldeep Singh in their house alongwith motorcycle and Shishpal son of Harnarayan closed the door of the house. All of them caused brutal injuries to my husband with Lathi and Kassi. My husband Kuldeep Singh raised of 'mar diya mar diya' then I called my mother-in-law Lichhma Devi wife of Nathuram resident of chobara and reached at the house of Shishpal then Shishpal son of Harnarayan opened the door of the house and gave brick below on mouth and right hand of my mother-in-law Lichhma Devi and Uttam alias Suresh pushed me and I fell in the street. Thereafter, Suresh s/o Diwan Singh alongwith other persons of village resident of Chobara reached at the spot, on seeing them, Shishpal, Uttam alias Suresh, Salinder, Satbir, Sandeep and Akash fled away from the spot alongwith their respective weapons Lathi and Binde of Kassi. I and my mother-in-law Lichhma Devi and Suresh saw my husband Kuldeep then there were deep injuries of Lathi, Kassi, Bindi on the body of my husband and blood was oozing and cloth were torn. Suresh Kumar and my family members rushed to the Government Hospital Bhuna for treatment of my husband in the police vehicle then Dr. Sahib declared my husband Kuldeep Singh as dead. Shishpal son of Harnarayan, Suresh @ Uttam and Salinder sons of Shishpal, Satbir son of Nathuram, Sandeep son of Satbir residents of Chobara and Akash resident of Mirjapur have killed my husband Kuldeep Singh by giving brutal injuries with Lathi and Binde of Kassi. The reason of the grudge is of putting the garbage on the vacant land of Shamlat. Strict legal



action be taken against them. Justice be given to us and Ravita wife of Uttam alias Suresh and Mukesh wife of Salinder resident of Chobara are involved in this fight. I got recorded my statement before my father Nihal Singh son of Ramalal resident of Kumharia. Heard. The same is correct. Sd/- Suman'.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case and no specific injury has been attributed to him. He submits that the petitioner has been implicated being the real son of Shishpal who is the main accused and there is no connecting evidence against the petitioner. The contention is that the petitioner is in custody since 25.02.2023 and 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 29 Prosecution Witnesses, only 7 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 1 year, 5 months and 14 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that petitioner is involved in one more FIR No. 43/2020 dated 30.01.2020 under Sections 427/436/506 IPC, 1860 registered at P.S. Bhuna, Fatehabad 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 22.05.2023 and 07.08.2023 and charges stands framed on 16.08.2023.

4. Analysis

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 1 year, 5 months and 14 days, no recovery has been effected from him and there is no direct evidence connecting the petitioner with the alleged evidence 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 22.05.2023 and 07.08.2023 and charges stands framed on 16.08.2023, out of 29 prosecution witnesses, only 7 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 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.

Further, involvement of the petitioner in other FIR is concerned, he has been acquitted by the Trial Court in that FIR vide order dated 29.05.2024 and in this regard 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/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

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