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

CRM-M-40465-2024

Date of Decision: September 25, 2024

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

Present: Mr. Kuldeep Singh Ahluwalia, Advocate with
Ms. Jaspreet Kaur, 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.134 dated 22.07.2021, under Sections 323, 341, 506, 34 of IPC (Sections 307, 325 of IPC added later on) registered at Police Station Nakodar Sadar, Jalandhar Rural, District Jalandhar.

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

"Statement of Charanjit Singh son of Gurmukh Singh son of Gurdev

Singh resident of Ramhimpur PS. Sadar Nakodar, District Jalandhar. Aged about 27 years, states that I am the resident of above stated address and is doing duty at HDFC Lohiya Khas. On dated 16/07/2021



when I was doing cleaning at the back side of my house, Sarabjit Singh son of Joginder Singh who does ploughing at the land on the at back side of my house and there well is just away from our house, then Kulwant Kaur wife of Sarabjit Singh resident of Ramhimpur came towards me while raising lalkara and stated to catch hold me and he should not escape today. Arshapreet Singh son of Sarabjit Singh armed with rod and Sarabjit Singh armed with stick came running towards me. Under the fear I went towards my house then Sarabjit Singh stopped me from front side, then Kulwant kaur starting saying that teach him lesson for putting the sand to near the wall and Sarabjit caught hold me and Arshdeep Singh gave a blow with his rod on my head which got hit on the middle of my head and thereafter he again gave two repeated blows on my head. Then I got un-conscious, when my family reach at the spot they pick me up then they all ran away from the spot. They also threaten my family members for their life and stated that we have killed him and now it is your turn. My family members got me admitted to Civil hospital at Nakodar for treatment, I was referred to Civil hospital at Jalandhar, due to multiple injuries, my family members got me admitted at Arman Hospital at Jalandhar, where I am under treatment. The motive behind the incident is that Sarabjit Singh land is behind our house and he removes the sand from the adjoining wall and we stop him from doing so therefore, he had attacked upon me.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that there is a delay of six days in lodging the instant FIR dated 22.07.2021 against the alleged occurrence which took place on 16.07.2021. Apart from that he submits that Section 307 of IPC has been added later on merely on the basis of an opinion submitted through a private hospital whereas on medical examination conducted of the injuries by the Civil Hospital Nakodar the said injuries were declared to be grievous in nature.

**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 01 years 01 month 01 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner has given iron rod blow on the head of the complainant and accordingly, Section 307 of IPC was added in the FIR later on the basis of medical opinion alone, but could not controvert the fact that the said opinion added is from a private hospital and as per the civil hospital opinion the injuries in question were declared to be only grievous in nature.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 01 year 01 months 01 day and perusal of the custody certificate depicts that he is not involved in any other case, meaning thereby he is not a habitual offender 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 17.10.2023; charges stand framed on 01.07.2024, there are total 18 prosecution witnesses, out of which 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 *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 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.



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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

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