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

CRM-M-39757-2024

Date of Decision: August 30, 2024

SAURAV**.....Petitioner(s)****V/S****STATE OF HARYANA****.....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Akshay Kumar Dahiya, Advocate with
Mr. Deepak Dahiya, Advocate
for the petitioner.

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

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.64 dated 27.02.2024, under Sections 34/379-B IPC and Section 25 of Arms Act, 1959, registered at Police Station Bahalgarh, Sonipat.

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

'12. To SHO Saheb Police Station Bahalgarh Sonipat, Sir, It is requested that I Rakesh Jindal, son of Shri Shamlal Gupta ji,



resident of KV-8 Pitampura, Delhi. We are running a petrol pump in the name of Singh Motors Bahalgarh, on the night of 26/27.02.2024, Virendra, Rajkumar, Satpal salesmen were working at the pump. At around 12.20 AM, a MARUTI SWIFT car, white in color, was parked on the side near the pump. Two young boys came from that car and one boy had a PISTOL in his hand and entered the SALES ROOM where NARENDER was present and made him open the cash counter and snatched RS 27000/- on the hand of the PISTOL and both the accused were sitting in their car by chance. Ran away. The salesman informed about the incident on 112 and also informed me by telephone. I immediately came to the pump with my brother DINESH JINDAL. I met you at the pump. I presented my written application to you who can identify the accused NARENDER, SATPAL and RAJKUMAR when they come forward. Strict action should be taken against the accused.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner would contend that the alleged stolen cash of Rs.27,000/- along with the alleged pistol used for the commissioning of the offence stands recovered from the co-accused namely Hardeep whereas the petitioner was neither present at the alleged spot of occurrence nor was seen in the CCTV but has only been arrested on the disclosure statement of the two co-accused persons.

He has also referred to the CCTV footage attached to the present petition at Annexure P-2 whereby he asserts that only one person is visible in the CCTV footage and the case of prosecution to the effect that petitioner was



sitting in the car is also not visible at all and belies the story of investigating agency. Further, he also seeks cancellation of regular bail on the fact that investigation is complete and neither any incriminating material has been recovered from the present petitioner nor is yet to be recovered.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts the 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 04 months 10 days.

Learned State Counsel on instructions from the Investigating Officer seeks dismissal of the instant petition by asserting that he was accompanying other two co-accused at the time of the alleged commissioning of the offence and has been arrested from the car itself, which was acquired by the present petitioner alone on rent, though he could not deny the fact that nothing has been recovered from the present petitioner as argued by the learned counsel for the petitioner. He informs the Court that there are 03 other FIRs pending against him.

4. Analysis

Having regard to the aforesaid submissions made on the behalf of respective counsels for both the parties, this Court is of the view that false implication of the present petitioner cannot be ruled out at this stage at least for considering the concession of regular bail wherein nothing incriminating has been shed a light upon by the learned State counsel except for the bald



allegations of merely sitting in the car outside the petrol pump but neither any cash nor alleged weapon has been recovered from him. It is also to be taken a note of the fact that the investigation in the present case is complete and challan stands presented to the Court on 18.5.2024 wherein charges are yet to be framed. Also total 16 Prosecution Witnesses are to be examined and it will certainly take a long time.

In the light of these facts, further detaining the petitioner behind the bars would tantamount to retaining the right to liberty as enshrined under Article 21 and as per the basic principle of the criminal jurisprudence that “*bail is a rule and jail is an exception*”. Also, the present petitioner is credible, being an M. Tech. aged 25 years still pursuing his studies, therefore, it would be in the interest of justice that the present petition is accepted.

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.

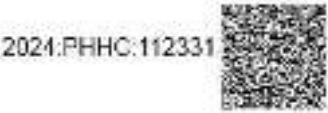
7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and



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 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.

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, this Court while referring Article 21 of the Constitution of India, 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

30.08.2024
Sangeeta

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