



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39155-2024 (O&M)
DECIDED ON: 02.09.2024

SUKHCHAIN SINGH @ CHEENA
.....PETITIONER

VERSUS

STATE OF PUNJAB
....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Chahit Bansal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-34166-2024

This is an application under Section 528 BNSS for amendment of head note in the main case whereby inadvertently Section 326 IPC could not be mentioned because these sections were added later on.

Notice in the application.

On the asking of the Court, Mr. Jasjit Singh Rattu, DAG, Punjab accepts notice on behalf of the respondent-State, who has no objection in case the above said application is allowed.

In view of the assertions made in the application as well as no objection suffered on behalf of the State, the application is allowed and Section 326 IPC is added in the head note of the petition.

The application stands disposed of.

CRM-M-39155-2024

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 BNSS for grant of regular bail to the petitioner in FIR No.02, dated 07.01.2024, under Sections 307, 379-B, 323, 324, 326, 506, 148, 149, 411, 201 IPC and Section 25/54/59 of Arms Act, registered at Police Station Dhanaula, District Barnala.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Duplicate statement, Statement of Surinderpal Urf Bala S/o Mohan Lal R/o Sangar Patti Dhanaula aged about 62 years M.No.98152 16615. It is stated that I am resident of above said address and does the work of agriculture along with transportation. On dated 06.01.2024 I alongwith my brother Sanjeev Kumar S/o Mohan Lal R/o Dhanaula and Arashdeep Sharma @Ram Patarkar R/o Dhanaula, Sohanjeet Singh S/o Ram Singh R/o Bhathla Road, Dhanaula and Chaindeep Singh S/ Satnam Singh R/o Rajgarh road Dhanaula were irrigating the wheat crop near bye pass bridge, Mana Pindi Dhanaula. It was about 4.15 PM Arashdeep Sharma left his 32 bore license revolver on the chair under my supervision and went for urinating in the field and other persons were working in the field. That when I was taking sun bath I saw 5-6 motorcycles coming ahead of XUV Vehicle and three persons each were riding on one motorcycle and the said persons were armed with baseball, swords and other deadly weapon and 6-7 persons alighted from XUV Vehicle and came towards me in speed out of which out of which one was Gurmeet singh @Kala S/o Gurjant Singh

R/o Dhanaula who fired 2-3 shots towards him with intention to kill me out of which One fire hit on my right shoulder and in order to save myself, when I picked up the 32 bore revolver lying near me which belongs to Arashdeep Singh @Patarkar, Gurmeet Singh along with his companions came near to him and started scuffling with me and Gurmeet Singh snatched my 32 bore revolver then out of them one person Rupinder Singh @Ravi S/o Rajpal Singh inflicted injury underneath my right ear with brick and I fell down. That thereafter two persons caught hold my arms and two persons caught hold my legs and Gurmeet Singh @Kala Dhanaula and Sukhchain Singh @Cheena S/o Nachatar Singh R/o Maur torn my clothes and thereafter Gurmeet Singh and Sukhchain Singh took sword and Baseball respectively from his companions and gave number of blows on both my legs. That thereafter all the said persons started beating me with their respective weapons. Then I raised alarm which attracted my companions and on seeing them the accused persons ran away from the spot along with their weapons and vehicles. That Rupinder Singh also took away my mobile phone make Oppo bearing M.No.98152-16615, 62836-20058 and Gurmeet Singh took away 32 bore revolver alongwith him and also fired 2/3 shots from my revolver. That thereafter my brother and friends arranged vehicle and got me admitted in the hospital.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the petitioner had given blows with baseball on the legs of the complainant, which would not attract Section 307 IPC against him. He further contends that no recovery whatsoever has been effected from the

present petitioner. It has been asserted on behalf of the petitioner that no incriminating material is available with the prosecution to connect the petitioner with the commissioning of the alleged incident. It has been submitted that co-accused persons, namely, Davinder Singh, Sehajpreet Singh @ Ashu Sekha Wala, Akashdeep Singh @ Ashupreet Singh Brar, Gurwinder Singh @ Babbu @ Nattiala, Pardeep Singh, Gobind Singh @ Gobi and Roshan Singh have been granted the concession of bail by learned Sessions Judge, Barnala vide orders dated 30.05.2024 (Annexure P-2), 03.06.2024 (Annexure P-3), 03.06.2024 (Annexure P-4), 02.05.2024 (Annexure P-5), 01.05.2024 (Annexure P-6), 24.04.2024 (Annexure P-7) and 10.04.2024 (Annexure P-8).

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in three more cases, wherein he is on bail in two cases and on production warrant in one case.

4. Analysis

Be that as it may, considering the custody period i.e. 05 months and 15 days for which the petitioner has suffered incarceration; co-accused persons, namely, Davinder Singh, Sehajpreet Singh @ Ashu Sekha Wala, Akashdeep Singh @ Ashupreet Singh Brar, Gurwinder Singh @ Babbu @ Nattiala, Pardeep Singh, Gobind Singh @ Gobi and Roshan Singh have been granted the concession of bail by learned Sessions Judge, Barnala vide orders dated 30.05.2024 (Annexure P-2), 03.06.2024 (Annexure P-3), 03.06.2024 (Annexure P-4), 02.05.2024 (Annexure P-5), 01.05.2024

(Annexure P-6), 24.04.2024 (Annexure P-7) and 10.04.2024 (Annexure P-8); Section 307 IPC would not be attracted in the instant FIR against the present petitioner as the injury is on the non-vital part of the body added with the facts that investigation is complete, challan stands presented to Court on 12.06.2024, charges are yet to be framed and total 43 prosecution witnesses are yet to be examined, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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 concession of bail.

5. DECISION:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail 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.

02.09.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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