



CRM-M-39562-2024

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

(218)

CRM-M-39562-2024

Date of Decision : 22.08.2024

Gurpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Walia, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This petition has been filed under Section 483 of BNSS for grant of regular bail to the petitioner in case FIR No.0048, dated 22.03.2024 registered under Section 382 IPC but later challan was presented under Sections 408, 411 and 120-B of IPC (Section 408 IPC omitted later on and Section 395 IPC was added) vide General Diary No.36 dated 21.05.2024 registered at Police Station City Sri Muktsar Sahib.

2. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has not been named in the FIR and has been falsely implicated in this case. There is no evidence against the petitioner which would connect him with the commission of crime and no recovery has been effected from him. The



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petitioner is behind the bars since 22.03.2024 and investigation in the case is complete, challan stands presented on 19.06.2024 and charges framed on 15.07.2024. Out of total nine prosecution witnesses, only four have been examined to date.

Notice of motion.

On behalf of the State

3. On the asking of Court, Mr. J.S. Rattu, DAG, Punjab accepts notice on behalf of the respondent-State and has produced the custody certificate dated 21.08.2024 of petitioner, which is ordered to be taken on record and vehemently opposes the concession of regular bail to the petitioner on the ground that the allegations against the petitioner are of serious nature.

It is verified by the learned State counsel from the Investigating Officer, that challan has been presented on 19.06.2024 and charges framed on 15.07.2024. Out of total nine prosecution witnesses, four have been examined to date.

4. **Analysis**

A perusal of the FIR (Annexure P-1), shows that no direct role has been attributed to the petitioner with regard to the alleged incident. It has been further argued that no recovery has been effected from the petitioner and he has clean antecedents. Apart from this, other co-accused namely, Harjeet Singh and Gurkirat Singh have already been granted the concession of regular bail by this Court vide order dated 13.08.2024, passed in CRM-M-38268-2024 and CRM-M-34419-2024, respectively. Further, as per the principle of 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 19.06.2024 and charges framed on 15.07.2024. Out of total nine



prosecution witnesses, only four have been examined to date, which is sufficient for this Court to infer that the conclusion of trial is likely to take a considerable amount of time and further incarceration would serve no useful purpose.

Hon'ble the Supreme Court in its latest judgment passed in '**Jalaluddin Khan vs. Union of India**' 2024 Live Law (SC) 571, observed as under :-

“21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. “Bail is the rule and jail is an exception” is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.”

Reliance can be placed on 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 are 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

Be that as it may, considering the aforesaid facts and circumstances, wherein other co-accused have already been granted the concession of regular bail. Investigation in the present case has already been completed and challan stands presented on 19.06.2024. Trial of the case would take sufficient time to conclude. No useful purpose would be served by keeping the petitioner behind the bars. Accordingly, the petitioner is directed to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

In light of the aforesaid discussions, the present petition is, hereby, allowed.

Pending applications, if any, stand disposed of accordingly.

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

August 22, 2024
Manpreet

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