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

CRM-M-39271-2024 (O&M)
Date of Decision: August 23, 2024

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

Present: Mr. Ashit Malik, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)**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.590 dated 26.10.2023 under Sections 148, 149, 302, 323, 506 IPC, registered at Police Station Gannaur, District Sonapat.

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

“To, the SHO, Police Station Gannaur, District Sonapat. Sir, it is submitted that I, Prince son of Balwan Singh, am a resident of village Gummar. About 2 years ago, my family had constructed a new house opposite the house of Phool son of Parkash, resident of village Gummar on the village phirni'. Adjoining to the house, we had carved out a shop for running a small general store which was at



present being used as a 'baithak'. Phool son of Parkash, Dharambir son of Parkasha, Sombir son of Parkash, Teja Singh son of Parkash and their families had objection to my and my family sitting outside our house and the shop. Due to this Dharambir son of Parkasha, Phool son of Parkasha, Sombir Son of Parkasha, Manish son of Chand Singh, Rohit, Salil son of Tirath, Phool, his wife and his son Ankush and Vicky son of Surender kept a grudge against us. On 15.10.2023, at about 8.00 o'clock when I, my father Balwan Singh, my mother Darshan, my real uncle (chacha) Tilak Raj, Isro wife of Tilak Raj, Sunny and Manisha were sitting in front of our house and shop then all the above mentioned persons in a planned manner attacked to kill us. All these persons were armed with sharp edged weapons. My family members started screaming in order to save themselves. In the meanwhile within my view Manish son of Chand Singh gave a blow with the iron gandasa which he was carrying in his hand on the head my father Balwan. Seeing the crowd gathered at the spot all the above mentioned persons fled from the spot along with their sharp edged weapons. While running away all of them said that we have been saved today but if they found us sitting in front of our houses then they shall kill us. In this fight, Balwan son of Lakhmi, Darshan wife of Balwan, Tilak Raj, Ishro, Sunny and Meesha have suffered injuries. I took my family members from the spot to Govt. Hospital, Gannaur for treatment where the doctor gave them first aid and then referred them to PGI, Khanpur. During this period, Dharambir son of Parkasha again threatened me and my family in Govt. Hospital, Gannaur that they shall finish the entire family. As my father Balwan had suffered many injuries in the fight, hence I took my father Balwan for treatment to PGI, Khanpur and then got him treated at



Safdarjung Hospital, Delhi. During the treatment my father Balwan breathed his last on 25.10.2023 due to the injuries suffered by him in this fight. Strict legal action be taken against the above mentioned accused. Applicant Prince 7303917247. Police Proceeding: On 15.10.2023, I, SI was informed by MHC, Police Station that a fight has taken place between two parties in village Gummar. Upon getting this information, I, SI along with companions reached at the spot at village Gummar where none of the parties was found present. Thereafter, I, SI along with companions went to CHC Gannaur where I, SI obtained the doctor's ruqa and MLR's of both the parties and came to know that first party Sudesh, out of which total 6 persons have received the injuries and from the side of second party i.e. Balwan son of Lakhmi Chand, 6 persons have also received the injuries. On the basis of MLR's the doctor Sahib had referred both the parties to BPS, Khanpur Kalan. In all the MLR's the doctor has mentioned KUV and blunt injuries. MLR No.AS/468/GNR/2023 Dt. 15.10.23 pertaining to injured Balwan son of Lakhmi Chand, resident of Gummar, in which reflects only one injury caused with blunt weapon. Thereafter, I, SI along with companions reached to BPS Khanpur Kalan for recording statements where the doctor mentioned on the written application that all the injured are LAMA. In the meantime, Sudesh w/o Sombir, resident of Gummar handed over an application to SI Rajesh No.884/SPT for taking action regarding fight. Thereafter, I, SI and SI Rajesh inspected the spot and FIR No.567 dated 16.10.2023, under section 148, 149, 323, 452, 506 IPC was registered at P.S. Gannaur against the aggressor party i.e. above mentioned Balwan etc. Thereafter, Balwan son of Lakhmi Chand, resident of Gummar also moved an application for taking action



regarding the fight. In this regard, as one FIR had already been registered against Balwan etc., therefore, I, entered the rapat roznamcha vide DDE No. 10 dated 16.10.1023 for verification of facts. Today i.e. on 26.10.2023, MHC, Police Station gave information to me SI that above mentioned injured Balwan son of Lakhmi Chand had died at Safdarjung Hospital during his treatment. Upon this information, I, SI along with ASI Sultan 351 with HC Sandeep 1034 left for Safdarjung Hospital for taking action. At the same time, Prince son of Balwan, resident of Gummar met me SI at the gate of police station and submitted a written application for taking action. On the basis of contents of complaint and MLR offence under section 148/149/323/302/506 IPC is made out and hence the proceeding for registration of case were sent to the police station by hand through HC Sandeep 1034. After registration of the case number be intimated. Facts of the case be narrated to SHO Sahib. The special report of the case be sent to the senior officers. I, SI left for place of occurrence at village Gummar and ASI Sultan 351 along with complainant have left for Safdarjung Hospital, Delhi for initiating the proceeding under section 174 Cr.P.C.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case no specific role has been attributed to him. It is submitted that no recovery is to be effected from the present petitioner. There is an unexplainable delay of 11 days in lodging of the FIR as the occurrence allegedly took place on 15.10.2023 and the FIR was registered on 26.10.2023. In fact, complainant party entered the house



and shop of the petitioner and caused injuries to her and her family members regarding which FIR No.567 dated 16.10.2023 was registered under Sections 148, 149, 323, 452, 506 IPC. The sole injury suffered by Balwan Singh (deceased), which proved fatal has been specifically attributed to co-accused Manish s/o Chand Singh. Co-accused namely Sudesh has already been granted the concession of bail by this Court CRM-M-29847-2024 vide order dated 03.07.2024 (Annexure P-5).

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 allegations against the petitioner are serious in nature.

4. Analysis

From the above case it can be culled out that the petitioner is behind the bars for last 09 months and 24 days; co-accused namely Sudesh has already been granted the concession of bail by this Court CRM-M-29847-2024 vide order dated 03.07.2024 (Annexure P-5) added with the fact that challan stands presented on 19.01.2024, charges have been framed on 18.04.2024 and out of total 27 prosecution witnesses, none has been examined till date, which is sufficient enough 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 made 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 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



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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:**

In view of the discussions made hereinabove, the petitioner is 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.

(SANDEEP MOUDGIL)
JUDGE

23.08.2024
Sangeeta

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