

CRM-M-39746-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(220)

CRM-M-39746-2024
Date of Decision : 27.08.2024

Jasvir Singh @ Jassi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kulbir Singh Sekhon, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.21, dated 25.04.2024 under Sections 324, 323, 148 and 149 of IPC, 1860 (Section 308 IPC added later on) registered at Police Station Amir Khas, District Fazilka, Punjab.

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

‘FIRST INFORMATION REPORT

District: Fazilka, P.S.: Amir Khas, Year: 2024, FIR No. 21
Dated: 25.4.2024, Sections: 324/323/148/149-IPC.
FIR contents: Statement of Surinder Pal alias Surinder s/o Hari Chand r/o Chak Kathgarh alias Droga aged about 45 years M. NO. 9781223314 stated that I am a resident of the above address and agriculturist by profession. On 23.4.2024, I was making straw from the grain of wheat in



my field and taking it to my home. It would be 9:45 PM when I sent the trolley full of straw to my house through my labour and I was riding on my motorcycle Paltina was approaching on the road from the field, then suddenly in front of me the motorcycle rider Raj Singh alias Raju s/o Kashmir Singh r/o Dhani Nihanga Wali Dakhli Chak Kathgarh alias Droga came on and raised alarm that caught hold of him, he should not be spared. Meanwhile pillion rider Karan Singh s/o Laddu Singh r/o village Amir Khas, came down and gave me sword blow from reverse side which hit on left side of my head above forehead then Raj Singh @ Raju above gave me Kapa blow from reverse side which hit on the right side of my head. The light of my motorcycle was on at that time and I fell down, they inflicted injuries while I was lying on earth, I raised alarm MARTA-MARTA, meanwhile, my uncle Om Prakash s/o Lachhman Das and Ajay Kumar s/o Om Prakash r/o Chak Kathgarh alias Droga who were coming to the village from Jalalabad city happened to hear my voice and came at spot. When they started to release me from the clutches of them, then Jasvir Singh alias Jassi s/o Balwant Singh armed with Kapa, Balwant Singh s/o Harnam Singh armed with Baseball, Manjit Singh s/o Bachan Singh armed with stick, Sona Singh s/o Kashmir Singh armed with Tregal(an agricultural instrument), Kashmir Singh s/o Uttar Singh armed with stick and 5/7 unidentified men who were holding weapons in their hands came and challenging them to catch them and let them taste the fun of scuffling with our boys. When he came forward to save them, all of them inflicted injuries upon person of my uncle Om Prakash too. All these persons are r/o Dhani Nihanga Wali Dakhli Chak Kathgarh alias Droga near my village. I can recognize these 5/7 unknown persons who were along with them when they appear before me. Then, seeing my family



members and the villagers coming, all the people ran away with their weapons. Then Ajay Kumar s/o Om Prakash r/o Chak Kathgarh alias Droga arranged a conveyance for both of us and got admitted to Civil Hospital Jalalabad. Where the doctor referred us to Sri Guru Gobind Singh Medical College, Faridkot for advanced treatment, where we are getting treatment. The motive is that the road of our village is often occupied by robbers at night. Because of this, they beat me. Scribed a statement to yourself. Found correct. Action should be taken. Signature in Punjabi Surinder Pal above, Affirmation Statement Signature in English Ajay Kumar s/o Om Prakash r/o Chak Kathgarh alias Droga, Attestation Sukhdev Singh ASI PS Amir Khas, Dated 25.4.2024 Police proceeding: Today MLR NO.63/JK/2024 /JBD/CHC dated 23.4.2024 pertains to injured Surinder s/o Hari Chand and MLR NO. 64/JK/2024/JBD/CHC dated 23.4.2024 pertains to Om Prakash s/o Lachhman Das rio village Chak Kathgarh was received about admission at Civil Hospital Jalalabad due to injuries but today received a call from mobile number 8146011359 made by Ajay Kumar s/o Om Prakash r/o Chak Kathgar alias Daroga at PS that after cutting MLR, my father Om Prakash and Surinder Pal above were referred to Sri Guru Gobind Singh Medical College, Faridkot, who are currently admitted in Faridkot for treatment, then I, ASI after reaching GGSMC Faridkot with fellow employees, written opinion was obtained from various doctors regarding recording the statements of injured Surinder Pal alias Surinder and Om Prakash above, they answered as both of them said injured was capable of giving a statement, on which I, ASI along with fellow employees reached near bed of injured Om Parkash where he was present talking to his relative who asked him to scribe his statement, who told that my pain is too much,



CRM-M-39746-2024

4

I cannot suffered a statement today, Om Prakash put his signature and his son Ajay Kumar testifying as witness, I ASI along with fellow employees accompanied by Ajay Kumar, reached the bedside of injured Surinder Pal alias Surinder above to obtain his statement, where injured Surinder Pal alias Surinder was present talking to his bedside relative. Who recorded his above statement before me, which was read out. who, after hearing it, accepted it as true and signed his statement in Punjabi, Ajay Kumar testified as witness, which I verified. MLR NO. 64/ JK/2024/JBD/CHC dated 23.4.2024 pertains to Om parkash has shown total 3 injuries out of which injury No. 1 and 2 kept under x-ray and injury No. 3 simple, It is shown that out of which injury no.1 Cannot be Asxirated and injury no.2 sharp and injury no.3 can be inflicted by blunt weapon and MLR NO. 63/JK/2024/JBD/CHC Dated 23.4.2024 of injured Surinder Pal alias Surinder s/o Hari Chand has been shown to have 2 injuries with blunt weapons and both injuries kept under X-rays. According to the statement and report from the doctor, offense u/s 324,323,148,149 IPC is made out. Action will be taken as the case may be after result of Injuries kept under X-ray. For registration of FIR statement by hand PHG Udeek Chand 23503 against Raj Singh alias Raju, Jasvir Singh alias Jassi, Balwant Singh, Manjit Singh, Sona Singh, Kashmir Singh, Karan Singh and 5/7 unidentified men are sent to police station. After registration FIR no. be informed. PCR Fazilka be informed. I, ASI along with fellow employees busy in investigation. sd/- Sukhdev Singh ASI PS Ameer Khas Date 25-4-2024 in the Area of GGSMC Faridkot at 08-50 PM; Today Police Station: Fir above under offence above against above is started to Registered. FIR along with Original Statement by hand same PHG sent to ASI at spot. PCR Fazilka is informed



CRM-M-39746-2024

5

*through e.mail. Name of I.O. Sukhdev Singh ASI 420/FZK
Name of SHO Mohinder Singh ASI 653/FZK'*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has been falsely implicated in this case and no specific role has been attributed to the petitioner. Moreover, there is no motive to cause injuries to the complainant and his uncle. There is no evidence against the petitioner which would connect him with the commission of crime. Learned counsel further submits that there is unexplained delay of two days in lodging of FIR, as the alleged occurrence took place on 23.04.2024 whereas, FIR was registered on 25.04.2024. The petitioner is behind the bars since 02.05.2024, investigation in the case is complete. *Challan* stands presented on 26.06.2024 and charges are yet to be framed. Out of total 14 prosecution witnesses, none has been examined as on date. Petitioner has never been declared proclaimed offender. The petitioner has undergone 03 months and 20 days in custody, conclusion of the trial may take sufficient time and therefore, further incarceration of the petitioner would serve no useful purpose.

Notice of motion.

On behalf of the State

4. 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 26.08.2024 of petitioner, which is ordered to be taken on record subject to just exceptions and vehemently opposes the concession of regular bail to the petitioner on the ground that allegations against the



CRM-M-39746-2024

petitioner are of serious nature. However, he could not controvert the custody period undergone by the petitioner.

5. **Analysis**

Investigation in the case is complete and challan stands presented on 26.06.2024 and charges are yet to be framed. Out of the total 14 prosecution witnesses, none has been examined as on date which makes it apparent that trial of the case may take long time to conclude therefore, no useful purpose would be served by further incarceration of the petitioner.

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 also 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 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 Nimesh 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) vs. 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.

6. **DECISION**

Be that as it may, considering the aforesaid facts and circumstances, investigation in the present case has already been completed and challan stands presented on 23.06.2024. 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.

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 27, 2024
Manpreet

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