



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39765-2024 (O&M)
DECIDED ON: 28.08.2024

NEELKAMAL SINGH ALIAS BILLA ...PETITIONER

VERSUS

STATE OF PUNJAB RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Prachi Gupta, Advocate for the petitioner.
Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-32643-2024

Allowed as prayed for. Leave to file petition is granted.

CRM-M-39765-2024

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No.64, dated 28.03.2021, under Sections 307, 324, 323, 148, 149 IPC (Sections 25, 54, 59 of Arms Act & Sections 326, 506 and 120-B IPC added later on) (challan presented under Sections 307, 324, 323, 326, 506, 148, 149 and 120-B IPC), registered at Police Station City-2, Khanna, District Ludhiana.

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

*“Statement of Anil Kumar Sharma son of Dhanpat Rai
Resident of Jagat Colony, Street Number 3, Ward Numbe*

4, Lalhedi Road, Khanna, Mobile Number 84370-00401, stated that I am resident of above mentioned address. I am working in Municipal Committee. I have 03 sons Nikhil Sharma, Chirag Sharma, Hitesh Sharma. My younger son who used to sit in Guru Amardass Market in a parking. Rajan Bawa kept on threatening my younger son Nikhil in different manners and due to this reason a case has also been registered against Rajan Bawa party. Today as per daily routine my younger son Nikhil Sharma was sitting in Amardass Market Khanna in the parking, that Rajan Bawa along with Monu sons of Kashmir Giri resident of Khatika Chowk Khana, Sanju, Rama sons of Billa Khokhe wala resident of Village Majri Police Station Sadar Khanna, Sunny alias Loon, Shenzad (Grandson of Bibi Fatima) residents of Peerkhana Road Khanna, Gora, Billa resident of Village Rasulada Police Station Sadar Khanna and 3-4 other unknown persons who were carrying Iron Dah in their hands, Iron Rods, Swords and batons, as soon as they came they launched an attack upon my son Nikhil with Dah, Rods, Swords which they were carrying in their hands upon his head, arms, legs with an intention to kill him and also brutally assaulted him while he was lying down, as soon as surrounding people heard noise and they about to rescue then above named persons fled from the spot along with their respective weapons. I brought my son Nikhil and admitted him to Civil Hospital Khana, where since his condition was serious so he was referred to Patiala. Now I am coming to you to record my statement. Legal action may be initiated against above named persons for assaulting my son with an intention to kill him. I have recorded my statement to you, heard it, is correct. Sd/- Anil Kumar. Endorsed by Sd/- Harry Sharma. Attested Sd/- Akash Dutt SI Station House Officer Police Station

City-2 Khanna, dated 28.03.2021. Police Proceedings:- Today myself SI/SHO along with ASI Sarjangdeep Singh 401/ Khanna, ASI Sukhdev Singh 759/Khanna, HC Amarjit Singh 674/Khanna, PHG Karanbir Singh 17253 boarding Government Vehicle Sumo Numbe PB-23-H-3444 the driver of which is HC Amarjit Singh 674/Khanna for checking of suspicious persons were present at Main Road Khanna-Ludhiana near Lalhedi, then Anil Kumar above named recorded his above mentioned statement, which was reduced to writing and read over, Who upon reading his statement, listening it, accepted it as correct appended his signatures underneath his - CAM-m statement in English, statement was endorsed by his son Hitesh Sharma and myself SI attested it. Prima facie a case is made out under section 307,323,324,148,149 IPC, So, for registration of case against Rajan Bawa along with Monu sons of Kashmir Giri resident of Khatika Chowk Khana, Sanju, Rama sons of Billa Khokhe wala resident of Village Majri Police Station Sadar Khanna, Sunny alias Loon, Shehzad (Grandson of Bibi Fatima) residents of Peerkhana Road Khanna, Gora, Billa resident of Village Rasulada Police Station Sadar Khanna and 3-4 other unknown persons, statement was sent by hand through PHG Karanmir Singh to Police Station. After registration of case number of the same may be informed. DCR Khanna may be informed. Special repots may be issued. Myself SI along with fellow employees am proceeding to the spot. Sd/- Akash Dutt SI Station House Officer Police Station City-2 Knanna. Upon receipt of above mentioned statement in Police Station above mentioned case was registered under above mentioned offence against above named accused persons. Original statement along with copies of FIR are being sent by hand through PHG 17926 for the

*kind perusal of Ilaga Magistrate and Senior officers.
DCR Khanna was informed.”*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that no specific role or injury has been attributed to the petitioner, moreso, the FIR has been registered on the statement of father of the injured Nikhil Sharma, who was not even present at the place of occurrence and had reached the spot later on, therefore, his statement is merely based on hearsay evidence and does not provide a true incident of the alleged occurrence. He further contends that co-accused of the petitioner, namely, Sunny and Manoj have been granted the concession of anticipatory bail by this Court vide order dated 27.05.2024 passed in CRM-M-54517-2023 (Annexure P-7) and CRM-M-54524-2023 (Annexure P-8) respectively.

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 two other cases wherein he is on bail in one case and was acquitted in another case.

On behalf of the complainant

Mr. Tanvir Singh Attariwala, Advocate has put in appearance on behalf of the complainant and filed his *Vakalatnama*, which is taken on record. He submits that the petitioner is a habitual offender and was armed with iron rod and has given blow on the head of the injured.

As far as contention of the complainant is concerned qua causing iron rod blow on the head of the injured, the same fact has not been corroborated by learned State counsel, who as per the medical legal report submits that the petitioner has not been attributed any injury though was armed with iron rod. The alleged injury has been attributed to the co-accused Rajan which has been declared dangerous to life, whose bail petition is pending for 17.09.2024.

4. **Analysis**

Be that as it may, considering the custody period i.e. 02 months and 17 days for which the petitioner has suffered incarceration; co-accused of the petitioner, namely, Sunny and Manoj have been granted the concession of anticipatory bail by this Court vide order dated 27.05.2024 passed in CRM-M-54517-2023 (Annexure P-7) and CRM-M-54524-2023 (Annexure P-8) respectively added with the facts that investigation is complete, challan stands presented to Court on 07.06.2024, charges are yet to be framed and total 37 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.

28.08.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No