



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40817-2024 (O&M)
DECIDED ON: 29.08.2024

PRINCE ALIAS PRINCE KUMARPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rhythem Bajaj, Advocate for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

CRM-33379-2024

This is an application for seeking exemption from attaching Aadhaar card or any identity proof of the petitioner.

For the reasons mentioned in the application, the same is allowed. Exemption sought for is granted.

Application stands disposed off.

CRM-M-40817-2024

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 FIR No.46, dated 25.02.2024 (Annexure P-1), under Sections 395, 384 and 120-B IPC (Sections 473 and 411 IPC added later on), registered at Police Station Sahnewal, Ludhiana.

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

“Statement of unknown Amarjit Yadav son of Ram Nath Yadav resident of Village Parsa alias Sirsia, Police Station Tamkhuhi Road, District Khushinagar, U.P. at present resident of Street No. 6/7, New Satguru Nagar, Lohara, Police Station Sahnewal, Ludhiana aged about 43 Years, Mobile No.: 98726-49186. Stated that I am resident of the aforesaid address and is working as Manager at Bhavya Enterprises Factory, Kanganwala Road, Jaspal Bagar. Accounting of the company's money and accounting of the workers are also with me. On dated 24.02.2024, advance was distributed to the workers and I have brought its remaining amount at home and on dated 24.02.2024 at about 9:30 PM, I was present at my home. Then 7/8 unknown persons from outside who have tied their faces, who was carrying Iron Rods and Datars in their hands, out of which three persons grabbed me and two persons grabbed my boy and pushed him with the wall on one side and other persons broke the lock of my cupboard and took cash and gold and mobile phone brand INFINIX NOT 11 in which SIM No. 82647-34186 was going on and ran away from the spot. To whom I have searched a lot at my own. Now I came to know that the person who stole my money is vijay alias Kala son of Ram Lal, Mohalla New Satguru Nagar, Ludhiana and Harjinder Singh, Sukhveer Singh alias Fauji son of Gurcharan Singh resident of Near Malli Chowk Ludhiana, Tatt son of Sarwan Singh resident of Near Bhutani Dealer, Garib Nagar, Jaspal Bagar Ludhiana, Deepak son of Sarwan Singh resident of Near Bhutani Dealer, Garib Nagar, Jaspal Bagar Ludhiana, Abhisekh alias Chirkut, Deepak Gupta son of Amrik Gupta resident of Near Mahadev Mandir, Mahadev Nagar, Ludhiana escaped with mobile phone. I will check the payment and gold and let you know later

that how many are there. Today I along with Gurdeep Singh son of S. Mehar Singh resident of Model Town Extension, Kothi No. 3727/23, Ludhiana was going to inform you. You have met. I have written the statement, I have heard it to be correct. Legal action should be taken against the said persons Sd/- Amarjit Yadav. Statement approved by: Gurdeep Singh son of S. Mehar Singh Resident of Model Town Extension, Kothi No. 3727/23, Ludhiana, Mobile No.: 98721-78401. Verified by: - ASI Surjit Singh No. 2383/Ludhiana, Police Post Kanganwal, Police Station Sahnewal, District Ludhiana Dated: 25.02.24. Police Proceedings: - Today I ASI along with ASI Ram Murty 1028/ Ludhiana, Constable 1407/Ludhiana, Jasvir Singh Constable Manpreet Singh No. 2933/ Ludhiana, PHG Umesh Singh No. 29541 was present at Eastman Chowk regarding patrolling and in search of the suspicious persons. Then the said Amarjit Yadav came and recorded his said statement to me ASI, statement is written, read over and heard. Who has read the statement and heard it and signed in English below the statement. Gurdeep Singh confirmed the statement and the statement was verified by me ASI. On the basis of the aforesaid statement, crime under Sections 395, 384, 120-B IPC is found to be committed. On which, the aforesaid Ruka has been written against Vijay alias Kala son of Ram Lal, Mohalla New Satguru Nagar, Ludhiana and Harjinder Singh, Sukhveer Singh alias Fauji son of Gurcharan Singh resident of Near Malli Chowk Ludhiana, Tatt son of Sarwan Singh resident of Near Bhutani Dealer, Garib Nagar, Jaspal Bagar Ludhiana, Deepak son of Sarwan Singh resident of Near Bhutani Dealer, Garib Nagar, Jaspal Bagar Ludhiana, Abhisekh alias Chirkut, Deepak Gupta son of Amrik Gupta resident of Near Mahadev Mandir, Mahadev Nagar, Ludhiana

under the said offense and PHG Umesh Singh No. 29541 is sent at police station for the registration of the case. FIR Number be informed after registration of the case. Special reports to be issued. Senior officers should be informed through control room. I ASI along with fellow employees and complainant of the case is going at the place of occurrence. Sd/- ASI Surjit Singh No. 2383/Ludhiana, Police Post Kanganwal, Police Station Sahnawal, District Ludhiana Dated: 25.02.24 at the Boundary Area of Eastman Chowk AT 6:20 PM.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was not initially named in the instant FIR but was nominated later on by the complainant vide supplementary statement on 29.02.2024 i.e. after 4 days of registration of FIR on 25.02.2024. He further contends that nothing has been recovered from the possession of the petitioner and is in custody since 29.02.2024. It has been asserted on behalf of the petitioner that co-accused, namely Sukhbir Singh has been granted the concession of anticipatory bail by this Court vide order dated 27.05.2024 passed in CRM-M-25953-2024.

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 Rs.10000/- has been recovered from the present petitioner.

4. **Analysis**

Be that as it may, considering the custody period i.e. 05 months and 24 days for which the petitioner has suffered incarceration; the petitioner

was nominated on the basis of supplementary statement made by the complainant on 29.02.2024; the co-accused of the petitioner, namely, Sukhbir Singh has been granted the concession of anticipatory bail by this Court vide order dated 27.05.2024 passed in CRM-M-25953-2024 added with the fact that the investigation is complete, challan stands presented to Court on 24.04.2024, charges are yet to be framed and total 13 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.

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.

(SANDEEP MOUDGIL)
JUDGE

29.08.2024

Poonam Negi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No