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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40069-2024

DATE OF DECISION: 27.08.2024

DILJOT SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. T.S. Dhillon, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)

This petition has been filed under Section 439 of the Code of Criminal Procedure seeking regular bail to the petitioner in case FIR No. 151 dated 11.04.2023 Under Sections 323, 341, 506, 148, 149 of IPC 1860 (Section 308 of IPC, 1860 added later on) registered at Police Station Division 7, Ludhiana District Police Commissionerate, Ludhiana.

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

‘Statement of Mohit Masih son of Tilk Masih resident of house No. 4095/4. street No. 0 Mohalla Beantpura, Chandigarh Road, Police Station Moti Nagar, District Ludhiana, aged about 19 years, mobile No. 62837-64096.1 would like to state that I am residing at the above noted address along with my family. I have studied up to 8th class and I am working In Vardhman Factory Chandigarh Road Ludhiana. On 09.04.2023 I along with my friend Vinay Kumar on motorcycle have gone to eat Momos near Green Land School LIG Road near Kay Deep Hospital, Ludhiana and at



about 10.00 PM, after eating Momos, I and my friend Vinay Kumar were in the process to go from there then Diljot Singh son of Randhir Singh resident of house No. 154-LIG Flat, Police Station Division No. 7, District Ludhiana armed with iron Dahat, Ashu Kumar armed with Kirpan, Sonu @Chahpatti armed with Kirpan, Sonu Jhuggian and Subham @ Dabba and Arjun Kumar armed with Datar and 10-12 unknown boys have encircled me and my friend Vinay Kumar and started abusing us and raising Lalkara, Diljot Singh has given blow of his Dahat with its reverse side on my head which hit on my forehead, Ashu Kumar has given Kirpan blow with its reverse side on my head, which hit on the upper side of my left eye, I become unconscious and fell down on the ground and thereafter they also beaten me while I was lying on the ground and they also beaten my friend Vinay Kumar, My friend Vinay Kumar has raised hue and cry then the passersby gathered there and due to gathering of public, they all ran away from the spot along with their respective weapons by threatening to kill us. My friend Vinjay Kumar has tied cloth on my head and brought me into sense and he took me to my house. My father Sh. Tilak Masih took me and my friend Vinay Kumar to Civil Hospital Ludhiana where the doctor has stitched my head injury and also stitched the injury of Vinay Kumar and after issuing MLRs of me and my friend, the doctor has sent us to our house. Next day I got doe the MRI of my head. The motive behind the incident is that some quarrel was occurred between my friend Banty and Subham @ Dabba, due to which, they have beaten me and my friend Vinay Kumar. Due to head injury, I could not come to inform you in Police Station. No I long with my father was going to the Police Station to inform about this incident then you met us, legal action be taken Diljot Singh, Ashu Kumar, Sonu@ Chaipatti, Subham @ Dabba, Arjan Kumar, Sonu Jhuggian and 10-12 unknown persons, I can identify the unknown persons on appearing before me. Statement got recorded, heard, same is correct. Sd/- Mohit Masih, supported by Sd/- Tilk Masih, attested by Sd/- Kuldeep Singh ASI No. 21471/Ludhiana Police Station Division Ne. 7 Ludhiana dated 11.04.2023. Police proceedings: Today myself ASI along with Sr.



CT Hardeep Singh No. 3547/Ludhiana and PHG Deva Nand No. 16403 was near presn Green Land Scholl Ludhiana in connection with patrolling and search of bad elements, then Mohit Mash son of Tilk Masih resident of House No. 4095/4, street No. O Beantpura Chandigarh Road, Police Station Moti Ngar, District Ludhiana came present along with her father and got recorded his above aid statement and after typing his statement by myself ASI on laptop lying in my car, and taking out its, print, read over the same to him, who, after hearing his statement and admitting the same to be correct, appended his signature in English on the bottom of statement and his father has appended his signature in support of the statement and myself ASI has attested the same. As per the contents of statement, offence under section 323,341,506,148, 149 of IPC is made out, therefore the Ruqa is being sent to the Police Station by the hand of PHG Deva Nand No. 16403 for registration of case against above said Diljot Singh, Ashu Kumar, Sonu@ Chahpatti, Subham @ Dabba, Arjan Kumar, Sonu Jhuggian and 10-12 unknown persons. After register case, number of the same be intimated, control room be informed. Myself ASI along with associate officials and complainant is going to the place of incident. Sd/- Kuldeep Singh ASI No. 2141/Ludhiana, Police Station Division No. 7, Ludhiana dated 11.04.2023.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and no role has been attributed to him in the alleged incident. He points out that earlier the petitioner was granted bail by the Court below but later due to addition of Section 308 IPC, the petitioner was again arrested. He submits that the petitioner is in custody since 22.10.2023 and no recovery is to be made from the petitioner, therefore, no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial



would take long time as out of total 13 Prosecution Witnesses, none has been examined so far. He further submits that co-accused Amritpal Singh @ Ashu, Sonu Kumar @ Chah Patti and Arjun Kumar have already been granted bail by this Court vide orders dated 09.08.2024 and 05.08.2024 passed in CRM-M-5446-2024, CRM-M-1108-2024 and CRM-M-47551-2023.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 10 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner is involved many FIRs but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 18.12.2023 and charges are yet to be framed.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 10 months and 1 day similarly situated co-accused have already been granted concession of bail by this Court, and as per the principle of the 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 18.12.2023 and charges are yet to be framed, out of 13 prosecution witnesses, none has been examined so far which is sufficient for this



Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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.

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 the concession of bail.

5. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

27.08.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>