



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40336-2024
DECIDED ON: 17.09.2024

ANUJ ALIAS BATTERY

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhinav Kalia, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.983, dated 20.11.2023, under Sections 148, 149, 323, 427, 308, 506 IPC, registered at Police Station Karnal City, District Karnal.

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

“Contents of the writing are as under: To The Incharge, Police Post Sadar Bazar, Karnal. It is submitted that I, Gaurav son of Shri Brijlal, am resident of Sadar Bazar, Karnal. 1. That in the year 2019, Battery Dinesh, Anuj and Saurav and Tanuj had broken/ damaged the car parked outside my house, due to which I had suffered a huge loss, in which FIR No. 96/2019 is registered. 2. After that now the matter is pending in court and the

accused being P.O., the police continued raiding at the house of the accused. 3. That the accused had been putting pressure on me continuously to compromise the matter, otherwise we would not allow to perform your marriage, after which all the accused and their 5 other accomplices had ' come and with intention to kill my brother-sister and my father had opened an assault and at the same time they snatched away ear ring of my Bhabhi. Apart from this, they had also caused damaged at my house. They have caused a huge loss to me. The ear ring has been found in the Naali (drain). 4. After that the accused after coming at my house in marriage have been threatening to kill the guests. The accused are criminal type of persons and many cases are still pending on them. It is prayed to your goodself that a strict action may be taken against them. Thanks. SD-Gourav, Gaurav son of Brijlal, resident of 9034883496, 20/11/23. Police action- Today I, SI am present in the police station when complainant Gaurav aforesaid produced an application alongwith MLR of Gaurav aforesaid to me SI. In MLRs No. MA/156/KNL/2023 Dated 19.11.23 of injured Jyoti, Doctor Sahab has shown one injury ADV X- RAY BLUNT and in MR NO. MA/57/KNL/2023 Dated 19.11.2023 of injured Pardeep, Doctor Sahab has shown total 3 injuries, 2 ADV XRAY and all the injuries are Blunt and in MR NO MA/58/KNL/2023 dated 19.11.2023 of injured Brij Lal, Doctor Sahab has shown total 3 injuries, all the injuries are Blunt and injury No.1 ADV X RAY OPINION. From the contents of the aforesaid application and result of MRs, commission of offence under Sections 148, 149, 323, 506, 308, 427 IPC is made out, therefore, the writing is sent to the police station through SPO Surjit Singh No.103 for getting a case registered. After registering the case, FIR number be intimated. I, SI

alongwith complainant proceed to the place of occurrence. At- Police Post Sadar Bazar, Karnal SD-Rammeher SI PP sdrknl dt. 20.11.2023 at 8708787594. In Police Station- At present it is entered that I, SI Bahadur Singh 87 am present in the police station, when on receipt of the aforesaid writing prepared by SI Ravinder, Police Post Sadar Bazar, Karnal alongwith application of Gaurav son of Shri Brij Lal, resident of Sadar Bazar, Karnal against Battery Dinesh, Anuj and Saurav, Tanuj and 5 other accomplices regarding hurling abuses and causing beatings to the complainant and family members of complainant on dated 19.11.2023 at 8/9 PM and threatening them to kill, in the police station through SPO Surjit Singh No.103, after registering FIR No.983 dated 20.11.2023, under Sections 148, 149. 323, 506, 308, 427 IPC in Police Station City, Karnal, same is being sent to the officer through the coming official for conducting further investigation and special report of the present case will be sent through Email to the higher officers.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the petitioner along with other co-accused persons attacked the complainant and his family members with an intention to kill them as well as snatched ear-rings from the ear of his sister-in-law. He further contends that no role has been attributed to the petitioner to connect him with the alleged commissioning of offence. It has been contended on behalf of the petitioner that nothing is to be recovered from the present petitioner, therefore, his custodial interrogation is not required.

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 eight more cases, wherein in four cases, he is on bail.

4. Analysis

Be that as it may, considering the custody period i.e. 08 months and 11 days for which the petitioner has suffered incarceration; no role has been attributed to the petitioner; nothing is to be recovered from the petitioner, therefore, his custodial interrogation is not required at all in addition to the fact that investigation is complete, challan stands presented to Court on 29.04.2023, charges were framed on 24.04.2024 and out of total 10 prosecution witnesses, none has been examined so far, 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.

17.09.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*