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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41224-2024
DECIDED ON: 02.09.2024

ARUN THAKUR ALIAS ANKU
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Kalsi, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.81, dated 02.09.2022, under Sections 365, 34 IPC (Sections 302, 307, 148, 149, 202, 201, 212, 216, 120-B IPC added later on) and (Section 34 IPC deleted), registered at Police Station Sadar Pathankot, District Pathankot.

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

“Statement of Mandeep Sahota S/o Late Sh. Gurnam Masih, resident of H.N.T-2 733 Jugial colony, Police Station Shahpurkandi, aged about 31 years, PH N. 9517969326, stated that I am the resident of abovementioned address and a private crane operator, My younger brother Navdeep Sahota, who is doing the

job of Beldar in the UBDC Canal department at Bhimpur Ejector, my brother has gone for duty from the house in a routine manner, I went to Ejector for giving him meal, where I came to know that some unknown persons in verna type car of white colour, in which four persons were riding and whose number plate has been covered, have taken away my brother Navdeep Sahota in the car at about 10 PM on 01.09.22 after giving him beatings, till now I have been searching him with the help my relatives, but so far nothing has been found about my brother, so today I along with my sister in law, Santosh wife of Navdeep Sahota were going to inform you, you have met, action be taken. Abovementioned unknown persons hide my brother somewhere. Signatures in English Mandeep Sahota abovesaid, signatures in Punjabi Santosh wife of Navdeep, /o Jugial colony, attested Tarsem Singh ASI I/C PP Gharota Ps Sadar Pthankot, dated 02.09.2022. Today | ASI along with Asl Gurmit Rai 473, AS Ratan Kal 1013/PT, HC Gurmit Sigh 762 by riding in the govt. vehicle PB- 35-2-0645, driver of the same is AS Balbir Singh 167, were patrolling and present at Bhimpur bridge, then the abovesaid Mandeep Sahota alongwith his sister-in-law Santosh w/o Navdeep Sahota came to me and Mandeep Sahota has recorded his abovesaid statement to me. Whose statement was written and read over to him. Who, after believing his statement to be correct, has appended his signatures below in the English and his sister-in-law Santosh have appended her signatures in Punjabi as witness, the same were attested by me, from the statements, offence under section 365, 34 IPC have been found to be made out, original memo of statement is being sent to Police station through HC Gurmit Singh 962. Case number be informed after registration of the same. Special reports be issued

and be sent to llaga Magistrate and senior officials. Control room be informed through wireless. I ASI along with colleagues and complainant, is going to the place of occurrence. Today in the area of Bhimpur Bridge, AT 07.50 PM. Sd/- Tarsem Singh ASI I/c PP Gharota, PS Sadar Pathankot, Dated 02.09.2022.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner was neither named in the FIR nor any allegation has been levelled against him. He further contends that the complainants in the instant FIR have become hostile and have not supported the case of the prosecution. It has been asserted on behalf of the petitioner that no incriminating material against the present petitioner is available with the Investigating Agency to connect him with the commissioning of offence either under Sections 302 & 307 or 365 of IPC. It has been submitted that co-accused namely Deepak Singh @ Deepu has been granted the concession of regular bail by this Court vide order dated 25.01.2024 (Annexure P-4) passed in CRM-M-59227-2023.

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 five more cases.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 05 months and 01 day for which the petitioner has suffered incarceration; co-

accused namely Deepak Singh @ Deepu has been granted the concession of regular bail by this Court vide order dated 25.01.2024 (Annexure P-4) passed in CRM-M-59227-2023; the complainants in the instant FIR have become hostile and have not supported the case of the prosecution added with the facts that investigation is complete, challan stands presented to Court on 26.05.2023, charges were framed on 27.09.2023 and out of total 58 prosecution witnesses, only 12 witnesses have 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.

(SANDEEP MOUDGIL)
JUDGE

02.09.2024
Poonam Negi

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