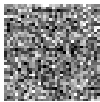


221

2024.PHHC:111755



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40920-2024
DECIDED ON: 29.08.2024

DEVENDER SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravinder Singh Saroha, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for granting regular bail to the petitioner in case FIR No.1057 dated 22.12.2023 under Sections 379-B, 420, 473, 212, 34 of IPC & Section 25 of Arms Act, P.S. Karnal City, Karnal (Annexure P-1).

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

“To the Respected Incharge Police Post, Sector-4, Karnal. Sir, it is respectfully submitted that I, Ramit Sachdeva son of Sh. Nanak Chand Sachdeva, am resident of 869 Sector-6, Karnal. I have business of rice-trading

at Gaushala Road, Old Grain Market. Sunil Kumar son of Jai Kumar, resident of Hakikat Nagar, Karnal and Kaushal son of Som Nath, Banso Gate, Matak Majri, are doing job with me. Both these persons, today, at 4.45 P.M. in the evening, were coming by bringing Rs. 18,00,000/- (Rupees Eighteen Lacs) from New Grain Market, on motor-cycle No. HR-05AX-2543, Splender. When my employees reached near Fruits Market, near shop No. 906, then 3-4 bully persons were come in a Car Number HR 05A07339 Make Baleno Car, were come from back-side and by showing gun, snatched the money and were gone away. It is my prayer that action may be taken. Thanks. Applicant Sd/- Ramit Sachdeva son of Sn. Nanak Chand Sachdeva Address 869, Sector-6, Karnal 9215205300”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that a sum of Rs.1,40,000/- along with walkie-talkie and car were recovered from the petitioner and apart from that no overt act has been attributed to him. He further contends that the co-accused of the petitioner, namely, Braham Parkash has been granted the concession of regular bail by this Court vide order dated 31.07.2024 passed in CRM-M-32893-2024. It has been asserted on behalf of the petitioner that the petitioner is having no connection with the alleged offence and is made an escape goat by the investigating officer just to save the skin of main culprits.

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 vehicle in question belongs to the present petitioner, from whose possession recovery of Rs.1,40,000/- along with one walkie-talkie and car was effected.

4. **Analysis**

Be that as it may, considering the custody period i.e. 07 months and 24 days for which the petitioner has suffered incarceration; co-accused of the petitioner, namely, Braham Parkash has been granted the concession of regular bail by this Court vide order dated 31.07.2024 passed in CRM-M-32893-2024; the petitioner is not a habitual offender, meaning thereby he is a man of clean antecedents added with the facts that challan stands presented on 30.03.2024, charges have been framed on 30.05.2024 and out of total 16 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.

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.

29.08.2024

Poonam Negi

(SANDEEP MOUDGIL)

JUDGE

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