

CRM-M-41422-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(221)

CRM-M-41422-2024
Date of Decision : 02.09.2024

Manga @ Manga Singh @ Cheeqoo

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vaibhav Narang, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.23, dated 03.02.2024 under Section 25(7) of Arms Act, 1959 (Section 201 IPC added later on) registered at Police Station Gate Hakima, Amritsar, Punjab.

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

“FIR No. 23 dated 03.02.2024, registered under Section 25(7) of Arms Act, 1959, registered at Police Station Gate Hakima, Amritsar.

Chief Officer Gate Hakima Amritsar "Jai Hind Sir" Today was ASI including ASI Malkit Singh 2315, ASI Balwinder Mash 610, S/CT Rajwant Singh 2915, CT Parminder Singh 3205 patrolling in connection with searching for bad guys on private vehicle with laptop printer, we were coming to



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Radha Krishna Colony from Mule Chak, Suiwali side. when the patrolling police party reached near Peer Baba Asa Shah, then the informer approached the ASI and informed that Ajay Singh alias Kaka r/o Fateh Singh Colony Amritsar along with his associates Kishan resident of Loon Mandi Amritsar, and Mohit alias Mowgli r/o Fateh Singh Colony Amritsar have formed a gang for possession and sale of illegal arms and ammunition, who are currently on foot, coming from side of Radha Krishna Colony towards mulley chakk and if strict checking is done now, then the above said accused can be caught with illegal arms and ammunition, the ASI informed the fellow officials about the above mentioned persons and sent back the informer. and ASI along with fellow employees started checking, then 03 young boys were seen walking from the front who started running back immediately after seeing the police party in front. In which two youths were caught by ASI with the help of fellow employees and one young boy successful managed to escape from the spot. The names of the arrested two young boys were asked as the first of them gave his name as Ajay Singh alias Kaka Thatha s/o Balkar Singh r/o Street No. 14 Fahet Singh Colony Amritsar and the other said that he was Krishna Laddar s/o Raju r/o Chintapurni Chowk Namak Mandi Amritsar and The name of the boy who escaped was Mohit alias Mowgli, s/o Rajinder, r/o Street No. 37, Fateh Singh Colony, Amritsar. In order to search for the two young boys, ASI first tried to involve witnesses from the public, but due to time and of traffic, no member of the public could join the police party. Then in presence of the police officials the search of first accused Ajay Singh alias Kaka was conducted and from the right pocket of his pants a local made pistol with 32 bore magazine was found which was unloaded and 2 rounds of live cartridges of 32 bore



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were found from that pistol. Another arrested boy, Kishan was searched and 04 rounds of live cartridges of 32 bore were found in the right pocket of his pants. ASI prepared a separate layout of the local Pistol 32 Bore and put the local Pistol 32 Bore along with two Rod 32 Bore in a cloth parcel that stamped all with his letter stamp AK and the pistol found from Kishan 04 was put in a Separate cloth parcel was prepared by putting in the parcel and parcel was stamped with his letter stamp AK and sample stamp AK was prepared separately and after using stamp it was handed over to ASI Malkit Singh 2315. The Parcel of the recovered pistols 32 bore with two Rod alive 32 bore and 04 Rond Zinda 32 bore Sharb stamped AK with sample stamp AK was taken into possession by the police through a separate fard which in Custody Ajay Singh Alias Kaka Thatha in his possession local pistol 32 bore along with 2 rod alive and Kishan in his possession 04 rod alive 32 bore have committed the offense of 25(7)-54-59 ARMS ACT by keeping 04 Rodn alive 32 bores and forming a gang for selling and buying ammunition and supplying illegal arms. That the case to be registered it is sent handed over to CT Parminder Singh 3205 to police station. After registering the case, the number should be given the case. A special report should be issued and sent to the service of the District Magistrate and other officers. ASI asking with other officers are present. Today area near Peer Baba Asa Shah Radha Krishna Colony AT:- 9:45 PM Correct/- Ashwani Kumar ASI In-Charge police station Annagarh Police Station Gate Hakima Amritsar Dated 3.02.2024 Today Police Station:-At present the said writing is received at Police Station. After registering, the original copy of the FIR and duplicate FIR has been handed over to the CT employee and is sent for further investigation at the spot. Information should be sent to officers and control



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room through telephonic. Special report to be issued at service of District Magistrate.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has been falsely implicated in this case and no specific role has been attributed to the petitioner. There is no evidence against the present petitioner which would connect him with the alleged commission of offence, name of the petitioner has been surfaced only on the basis of the disclosure statement of the co-accused. Nothing incriminating has been recovered from the petitioner. The other co-accused namely, Krishna @ Ladhar and Mohit Singh @ Mongli have already been granted the concession of regular bail by this Court vide orders dated 23.04.2024 and 24.05.2024, passed in CRM-M-18515-2024 (Annexure P-2) and CRM-M-24787-2024 (Annexure P-3), respectively. Petitioner happens to be involved in a number of other criminal cases as detailed in the petition. Petitioner has never been declared proclaimed offender. The petitioner is behind the bars since 09.03.2024, investigation in the case is complete. Challan stands presented on 02.05.2024 and charges are yet to be framed. Out of total 14 prosecution witnesses, none has been examined yet. The petitioner has undergone 06 months and 03 days in custody and the conclusion of the trial may take considerable amount of time and therefore, further incarceration of the petitioner would serve no useful purpose.

Notice of motion.

On behalf of the State

4. On the asking of Court, Mr. J.S. Rattu, DAG, Punjab accepts

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notice on behalf of the respondent-State and has produced the custody certificate dated 01.09.2024 of petitioner, which is ordered to be taken on record and on instructions from the investigating officer, vehemently opposes the concession of regular bail to the petitioner on the ground that allegations against the petitioner are of serious nature and the fact that petitioner is involved in as many as 17 other criminal cases, as detailed in the custody certificate, meaning thereby that petitioner is a habitual offender. However, he could not controvert the custody period undergone by the petitioner.

5. **Analysis**

Investigation in this case is complete and challan stands presented on 02.05.2024 but charges are yet to be framed. Out of the total 14 prosecution witnesses, none has been examined yet which makes it apparent that trial of the case may take long time to conclude therefore, no useful purpose would be served by further incarceration of the petitioner.

As far as the pendency of other cases and involvement of the petitioner in other criminal cases is concerned, it will not be a predicament for this Court in view of 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 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



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cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

Hon'ble the Supreme Court in the judgment passed in '**Jalaluddin Khan vs. Union of India**' 2024 Live Law (SC) 571, observed as under :-

“21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. “Bail is the rule and jail is an exception” is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.”

Reliance can also 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 are 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) vs. 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.

6. **DECISION**

Be that as it may, considering the aforesaid facts and

circumstances, investigation in the present case has already been completed and challan stands presented on 02.05.2024. Trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner behind the bars. Accordingly, the petitioner is directed to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

In light of the aforesaid discussions, 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

September 02, 2024
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No