



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209 CRM-M-41225-2024
DATE OF DECISION: 30.08.2024

FARZANA ALIAS FARA ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Jhamb, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 has been invoked seeking the concession of regular bail for the petitioner in FIR No.350 dated 29.05.2024, under Sections 365, 379-A, 506, 384, 34 IPC, 1860 registered at Police Station Mujesar, Faridabad.

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

‘To, Police Station Incharge, Sanjay Colony, Faridabad, sir, it is requested that I Rajesh Kumar Patel, s/o Sh. Ram Ek Bal Patel, r/o Rampur Khajuriya, P.S Dumariya, Motiheer, Bihar, presently r/o rented H. No. 9, Kapasiya House, near Sudershan Hospital, Mukesh Colony. Ballabgarh, Faridabad. Around 4-5 before, I got a call from unknown girl who started talking to me. On 28.05.2024, I met that girl in the market about 11:30 PM and she requested to drop her near Sarurpur Puliya, due to non-



availability of any vehicle I came drop her at Sarurpur Puliya, on which the on my motor cycle bearing No. HR-29AA-5963, but on the way she called four unknown persons, who came there on two motor cycles and intercepted me and thereafter, they made him sit on their motorcycle and forcibly took me nearby bushes, where they assaulted me and snatched Rs. 5,000/- two Samsung Mobiles A34 and A12S and after taking Pin of Phone Pay App, they transferred Rs. 1 Lakhs from my account to their account and while leaving they threatened me with dire consequences if I give any complaint in police. Requested to kindly take appropriate action against them'.

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 was not named in the FIR initially but was implicated as an accused subsequently on the basis of disclosure statement of co-accused Shamshu merely on the allegation that one Rihanna transferred Rs. 15,000/- in the account of the petitioner out of the extortion money. He has argued that apart from that, there is no incriminating material available with the prosecution and Rihanna has also not been nominated as an accused even at the time of filing of the challan presented on 30.07.2024.

Notice of motion.

Learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State.

On behalf of the State

Learned State Counsel has filed the custody certificate of



the petitioner, which is taken on record. According to which, the petitioner is behind bars for 2 months and 18 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular but could not controvert the fact that Rihanna is not named as an accused but she transferred money out of the extorted amount in the account of the petitioner and therefore, the petitioner does not deserve the concession of bail.

4. Analysis

Be that as it may, having regard to the afore-said submissions made before this Court, learned State Counsel has failed to establish the connectivity of the amount transferred by Rihanna in the account of the petitioner with the extorted amount and therefore, cannot be culminated into saying that it was the amount which was received by way of extortion by the other co-accused persons.

In light of the above, the Court is convinced that no offence under Sections mentioned above seems to have been made out at this stage which find reasons for this Court for denial of the regular bail to the petitioner.

Though custody part is only for 2 months and 18 days but according to the custody certificate he is not involved in any other case, meaning thereby he is not a habitual offender and probability of his false implication in the instant FIR cannot be ruled out 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 30.07.2024



charges yet not framed, out of 18 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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on her 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

30.08.2024
anuradha

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