



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-M-40895-2024
DATE OF DECISION: 30.08.2024

ATUL

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saleem Ahmed, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in FIR No.93, dated 23.03.2022, under Sections 148, 149, 302, 307, 427, 452, 506, 120-B IPC and Sections 25 & 27 of Arms Act (later on Section 212/201 IPC added later on) registered at Police Station Sadar Palwal.

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

“TO, Incharge Police Post Dighaut, District Palwal. Sir, it is requested that I am Akash son of Rajesh, resident of Dighaut, District Palwal, we are two brothers, Yashbir is my elder brother, of our family members Surender son of Rajender, Govind son of Gangacharan, Yogesh alias Tinku son of Gugal, resident of Dighot and Anand, resident of Dakora, who seems to be Surender's brother-in-law and has been fighting with him for



many yeals: Those who Surrender etc. were holding a grudge against us regarding this. matter, who had threatened us many times that if we got a chance, we would destroy your family, keeping the grudge on this matter, Surrender, Govind, Anand, Tinku conspired to destroy our family, Tekchand resident of Khedi, Neeraj. Pandit, resident of Faridpur, District Faridabad, Jagga resident of Chandhat, he is a villain type of man and is responsible for many murders and are criminals of robbery and dacoity and they have made a name for themselves by committing crimes and together they gave money to destroy our family and Tekchand etc. took money from Surendra etc. to kill us. Kailash's brothers. Pratap and Mahesh, resident Alawalpur dealer, resident Balai and along with him four unknown persons, yesterday on 22.03.2022 at around 12:00 noon, when I was standing at the wall of my uncle Dinesh's Nohra, that Kailash, Pratap, Mahesh, resident of Alawalpur, dealer resident of Balei and the names of four others, I don't know, came to our house in Nohra, my brother Yashbir and sonu son of Satbir, resident of Dighot, Sarfaraz son of Farcog resident of Dhinki, Hathin Engineer, Jaiveer son of Karan Singh R/o Korali who was the contractor because we were constructing a new house at Nohra had come to see him were Kailash, Pratap. Mahesh, the dealer and along with him four unknown names, all of whom had pistols in their hands and started firing from outside also. I immediately moved from the wall to the roof and everyone came from front to back firing bullets and hearing the sound of the bullet, Yashbir closed the door from the other side, they. all broke the door and started firing indiscriminately at my brothers Yashbir, Sonu, Sarfaraz and Jaiveer sitting inside. After firing for a long time, they started saying that if any one of you survives today, they will kill you, when Kailash etc. started firing indiscriminately again, my brother Yashbir got hit by several bullets and Sarfaraz and Tasveer were also shot, my mother Gayatri Devi also came to the spot after hearing the sound of



bullets, Kailash and others also fired bullets at my mother, she also narrowly escaped, after their departure Vikas son laggar, Kishan's son Dayaram also came at the right time and with their help, I put Yashbis, Sarfaraz, Jaiveer in my car and first referred Yashbir to Apex Hospital, Palwal, Doctor Saheb referred Yashbir to Sarvodaya Hospital, Faridabad. Leaving Sarfaraz and Jaiveer for treatment, we Drought Yashbir to the hospital from Sarvodaya Hospital. My brother Yashbir died during treatment, he died after being shot by Kailash, Pratap, Mahesh etc. who has killed my brother Yashbir by paying money to Tekchand, Neeraj, Jagga and hatching a conspiracy by Surrender, Gobind, Anand, Tinku, Kailash, Pratap, Mahesh, dealer and 4 unknown persons. Legal action be taken against them, this entire incident is recorded in our CCTV camera installed in Nohra. Sd/- Akash son of Rajesh, resident of Village Dighaut, District Palwal 8053491830. Police Proceedings: - Today information was received through telephone that Yashbir son of Rajesh, resident of village Dighot is admitted in Sarvodaya Hospital Sector 8 Faridabad due to bullet injury, after receiving the information myself SI along with SPO Joginder No. 242, reached Police Station sector 8 Faridabad, from where after getting slip from the Doctor, Leached Sarvodaya Hospital Sector 8 Faridabad, from where MLR No.2F200320221300, in which the Doctor has recorded 7 injuries. After obtaining MR, SI obtained a written. opinion about injured Yashbir from Doctor, in which Doctor has mentioned that the injured was not capable of giving a statement, after waiting there for a long time, Akash son of Rajesh, resident of village Dighot, district Palwal together presented an application. Keeping in view of the contents. of the application submitted by injured and MIR, offence under Section 148, 149, 302, 307, 427, 452, 306, 120 -B, of IPC and under Sections 25, 54 and 59 of Arms Act have been found made out. That statement is being send to the police station through SPO



Joginder No. 242 for registration of FIR, after registration of case number of the same may be informed, in the case special reports may be prepared and sent for the kind perusal of senior officers, that myself I am busying in Sarvodya Hospital Faridabad, permission may be granted for investigation. Today at Sarvidya Hospital Faridabad I/C Police Post Dighaut Police Station Sadar Palwal Dated 23.03.2022. Today at Police Station:- Upon receipt. of above, mentioned statement case Number No. 93, dated 23. 03.2023, under Sections 148, 1.49, 302, 307, 427, 452, 506, 120-B Of IPC and under Sections 25, 54 and 59 of Arms Act was registered at Police Station Sadar Palwal. Copies of FIR were prepared in CCTNS COMPUTER, Special reports are being sent through special messenger C. Ankit NO. 527/Palwal for the kind perusal of Ilaga Magistrate and senior officers. Copy of Police file along with criginal statement is being sent through arrived SPO to responsible IO at the spot. Note: - This case has been registered in the presence of ASI Ashok Kumar. That since ID Of ASI Ashok Kumar is not available in CCINS COMPUTER So same has ben registered in the I.D. of HC SUKHBIR SINGH. IO on the present case is ASI Ashok Kumar. Due to technical fault in CCINS, this case has been registered with delay.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case and was arrested on the disclosure statement of co-accused. As per the alleged allegations, the petitioner was present in the meeting of planning of conspiracy but the petitioner was not named in the FIR. He submits that no recovery has been effected from the petitioner and co-accused namely Rajender

@ Singh Sahib, Imran Malik, Yogender, Ankit, Rahul, Noruik @ Bhola



and Rajat have already been granted concession of regular bail in CRM-M-24873 of 2024 on 29.05.2024, CRM-M-26845 of 2024 on 31.05.2024, CRM-M-27067 of 2024 on 31.05.2024, CRM-M-28401 of 2024 on 03.07.2024, CRM-M-28521-2024 on 03.07.2024, CRM-M-32536 of 2024 on 17.07.2024, CRM-M-34951-2024 on 31.07.2024 respectively. He points out that no overt act has been attributed to the petitioner and all the material witnesses including the complainant have turned hostile. It has been submitted on behalf of the petitioner that he is in custody for more than 6 months and no weapon has been recovered from the present petitioner.

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 other FIRs also but is not in a position to dispute the fact that the co-accused persons have been granted the concession of bail by this Court.

4. Analysis

Be that as it may, considering the custody period i.e. 06 months and 13 days for which the petitioner has suffered incarceration; co-accused persons have already been granted concession of regular bail by this Court; the petitioner was not initially named in the FIR but was subsequently roped in only on the basis of disclosure statement of co-accused person; no overt act has been attributed to the petitioner; material witnesses have turned hostile added with the fact that challan stands presented before the trial Court on 20.04.2024, charges stand



framed on 05.09.2024 and out of total 58 prosecution witnesses, only 10 have been examined so far, which is suffice enough 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 guaranteed 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



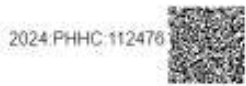
keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

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 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

30.08.2024
anuradha

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