



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CRM-M-41356-2024 (O&M)
DATE OF DECISION: 30.08.2024

MOHAMMAD AAMIR ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mayur Karkra, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.
Mr. Priyavrat Parashar, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession of regular bail for the petitioner in FIR No.121 dated 27.06.2024, under Sections 379-A, 201 and 34 registered at Police Station Dhand, District Kaithal.

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

‘First Information Contents: Copy of the case is as follows, Sir, To, SHO. P.S. Dhand, Sir, It is requested that I Anguri Devi Wife of Sh. Ramdari aged about 64 years and today at about 12PM in the afternoon whereby I along with my daughter Khushi were at home, such that at that time two people were selling out clothes on street and they came at the gate of my house and asked me if I want to buy clothes to which I said I do not want to buy clothes but they persistently kept on persuading to buy clothes on which I along with my daughter started looking at clothes, whereby rate of one T-shirt and Lower was settled for an amount of Rs.500. Whereafter I



went inside Room and brought on small ladies purse which contained cash amount of Rs.30,000/- and documents like my aadhar card, the moment I tried to take out an amount of Rs.500/- out of the said amount suddenly the aforementioned persons snatched my aforementioned purse from the Baramda of my house and fled away. I along with my daughter tried to catch hold of those persons and also raised hue and cry regarding the same, such that the aforementioned two persons fled away by walking in street and then sat in a car parked at Main Chowk and Ran away. Such that you are hereby requested that the aforementioned thieved be searched and strict legal action be taken against them and my money be recovered from 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 as the FIR was registered against some known persons and the petitioner was neither named in that FIR nor any specific role has been attributed to him. He submits that the petitioner was nominated as an accused merely on the basis of a information received by Investigating officer and nothing incriminating has been recovered from him. It is further contention that even in the Test Indemnification Parade conducted by Magistrate the complainant did not identify the petitioner whereas the co-accused were identified. He informs the Court that the matter has been compromised between the parties and a copy of the compromise deed has been produced by the counsel for the petitioner. He has further argued that the antecedents of the petitioner are clean. He submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 11 Prosecution

Witnesses, none has been examined so far.

**On behalf of the State**

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 month and 22 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 06.08.2024 and charges are yet to be framed.

On behalf of the complainant

Learned counsel for the complainant would submit that the compromise has been effected between the parties and he has no objection if the petition is allowed and the petitioner is enlarged on regular bail.

4. Analysis

In view of the totality of the circumstances and particularly the compromise which has been arrived between the parties which fact is not controverted by counsel for the complainant, added with the fact that 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 06.08.2024 charges are yet to be framed, out of 11 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 his 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

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