



216

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-41864-2024

Date of Decision: September 03, 2024

GURMAIL SINGH ALIAS RAJU**....Petitioner(s)****VERSUS****STATE OF PUNJAB****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Varlin Garg, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 483 of B.N.S.S. has been invoked seeking the concession of regular bail for the petitioner in FIR No.228 dated 29.08.2020, under Section 346 of IPC (Sections 365, 302, 201, 120-B IPC added later on vide DDR No.01.09.2020), registered at Police Station Sardulgarh.

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

‘Copy of Statement "Statement of Dharminder Singh S/o Narinder Singh S/o Mohinder Singh R/o Ward Number 4 Sirsa Kanchian Sardulgarh aged around 42 years Mobile Number 98157-10412 stated that I am resident of above mentioned address and I am doing Agriculture work, my mother Gurwinder Kaur had died in the year 2008 due to Cancer ailment as a result of which my father started living in



shock as a result of which my father was remaining mentally disturbed, since that time my father was having around 16 Killas of land and was also having other moveable and immovable property in his name, then in the year 2017 since my father was mental disturbed went from home, we searched him a lot and enquired at our own level we came to know that Power of Attorney of my father has been obtained by Paramjit Kaur W/o Amrinder Singh R/o Ludhiana presently residing at Modern Valley Mata Chanchmawri Devi Mandir Kothi Number 208, Sirhind, District Fatehgarh Sahib, as a result of which me and my family has firmed belief that my father Narinder Singh has been hidden at some undisclosed pace in illegal custody by Paramjit Kaur W/o Amrinder Singh, Karanveer Singh S/o Amrinder Singh and brother of Paramjit Kaur namely Raju Residents of Abaidpura presently residing at Modern Valley Mata Chanchmawri Devi Mandir Kothi Number 208, Sirhind, District Fatehgarh Sahib in collusion of each other in order to grab movable and immovable property of my father and due to the greed of property they are torturing my father, I have suspicion that they can cause loss to the life and liberty of my father, appropriate legal action may be initiated against above named persons. I have recorded my statement which is correct.'

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 only on the basis of disclosure statement of Amisha, who happens to be the wife of co-accused Karanvir Singh as both are having strained relations. He submits that the disclosure statement given by the wife of the co-accused is biased having no iota of truth in it and no incriminating material in support of that statement has been made available to the investigating agency and still the police went ahead to nominate the present petitioner as an accused at the time of filing of the challan. Learned counsel for

the petitioner further submits that co-accused namely Karanvir Singh has also



been granted the concession of regular bail by this Court vide order dated 21.02.2024 passed in CRM-M-8220-2024 (Annexure P-7).

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 almost 03 years 11 months 25 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 22.02.2021 and charges stands framed on 24.03.2021.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 03 years 11 months 25 days and similarly situated co-accused have already been granted concession of regular bail by this Court, 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 22.02.2021, charges stands framed on 24.03.2021, out of 23 prosecution witnesses, only 08 have 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 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 the 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 hereby directed to be released on regular bail under Section 483



BNSS, 2023 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

03.09.2024
Sangeeta

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