



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41938-2024

Date of Decision: September 03, 2024

ASH MOHAMMAD @ ASHU

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

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**

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession of regular bail in FIR No.0149 dated 31.10.2023, under Sections 302, 34 IPC, registered at Police Station City Nawanshahar, District SBS Nagar.

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

'Statement of Rajat Kumar S/o Harmesh Lal R/o Kalra Mohala Garhshankar Road, Nawanshahr, Police station City Nawanshahr, District SBS Nagar aged about 22 years Mobile no. 95927-54572 stated that I am resident of above mentioned address, I run kariyana shop in my mohala, my father passed away about 5 years ago, my mother Surinder Kaur is house wife, one of my sister Kajal W/o Ajay R/o Gopal Nagar Jalandhar is married there, my younger brother



Vishal @ Galu aged about 17-18 years, today I was present at my kriyana store then my younger brother Vishal @ Galu went from home along with his one of his friend Pritam R/o Guru Teg Bahadur Nagar and one another friend at about 3-4 in afternoon on bike of Pritam, that after sometime I came to know that my brother Vishal @ Galu and his friends had a fight with another group that is ccthat the above mentioned fight took place at Mohula Shiv Nagar near Kusht ashram Nawanshahr on which I reached on the spot and saw there were many girls gathered there and due to the fight stones and bricks were scattered, and I saw that the above mentioned person have injured my brother with sticks, sword etc., on seeing him I got scared, the friends of my brother took him to civil hospital Nawanshahr for his treatment and the persons who have inflicted the injuries to my brother left the spot along with their respective weapons on their motorcycle, I personally know these persons, then when I reached civil hospital Nawar shahr then I came to know that my brother Vishal @ Galu have died due to the injuries caused by above mentioned persons that my brother Vishal Galu have been murdered by Parmod Paswan S/o Ram Babu, Mantosh Kumar S/o Ram Babu, Deepak S/o Ashok Kumar and Aash Mohammad @ Ashu S/o Afsar Khan all resident of Mohala Shiv Shankar near Kusht Ashram Nawanshahr, police station City Nawanshahr, District SBS Nagar, during fight. Reason of rivalry is that friend of my brother Vishal @Galu i.e. Pritam Rio Guru Teg Bahadur Nagar was having a friendship with one girl and that girl was also having friendship with Parmod Paswan due to which both of them have earlier also entered into arguments with each other and due to that rivalry today also both the parties had a fight. Dead body of my brother Vishal @ Galu is present in civil hospital Nawanshahr, I after discussing with my family was coming before you to inforrn you but you met me, I in presence of my Maternal uncle's son Sandeep Kumar S/o Shinderpal R/o Village Saila Khurd Police station Malpur District Hoshiarpur have recorded my statement to you and heard it, read it over and found it correct. Strict legal action be taken against above mentioned persons. Sd/- Rajat



Kumar Sd/- Sandeep Kumar Sd/- Naresh Kumari, INSP/SHO P.S. City Nawanshahr Date 30-10-2023. Police investigation: Today on 30-10-2023 at about 11:20 PM 1 INSP/SHO along with ASI Satnam Singh 774/SBSN, ASI Ravinder Kumar 833/SBSN, ASI Prem Kumar 137/SBSN, HC: Ravi Kumar 446/SBSN, SCT Mandeep Singh 1090/SBSN, SCT Sandeep Singh 898/SBSN on our government vehicle whose driver is ASI Prem Kumar 195/SBSN along with Laptop and printer for patrolling and checking of suspicion persons were present at Chandigarh round bout Nawanshahr, that we received an information from civil hospital Nawanshahr that Vishal S/o Harmesh Lal Rio Kalra Mohala Garhshankar road Nawanshahr P.S. City Nawanshahr District. SBS Nagar was brought to civil hospital for treatment due to injuries but before reaching the civil hospital above mentioned Vishal died and Parmod Paswan S/o Ram Babu R/o Mohala Shiv Shankar near Kusht Ashram Nawanshahr P.S. City Nawanshahr District SBS Nagar was also admitted in civil hospital Nawanshahr as he also received injuries who after getting his MLR done got LAMA from hospital on which I INSP/SHO along with other police officials were heading towards civil hospital Nawanshahr that when we reach at gate of civil hospital Nawanshahr there Rajat Kumar S/o Harmesh Lal R/o Kalra Mohala Garhshankar Road, Nawanshahr, Police station City Nawanshahr, District SBS Nagar along with his family members was present who got recorded his above mentioned statement before me on which his statement was noted down and was read over and after hearing and understanding he found his statement to be correct and signed the same in Punjabi and his Maternal uncle's son Sandeep Kumar S/o Shinderpal R/o Village Saila Khurd Police station Malpur District Hosh arpur witnessed the statement and I INSP/SHO attested the same that from the statement and information received from the civil hospital Nawanshahr an offence under section 302,34 IPC is found to have been committed and after scribing the Ruqa against Promod Paswan S/o Ram Babu, Mantosh Kumar S/c Ram. Babu, Deepak S/o Ashok Kumar and Aash Mohammad @Ashu S/o Afsar Khan all resident of



Mohala Shiv Shankar near Kusht Ashram Nawanshahr, police station City Nawanshahr, District SBS Nagar is being sent by hand through SCT Mandeep Singh 1090/SBSN to P.S. City Nawanshahr for registration of the case against above mentioned person under above mentioned sections. After registration of the case his number be informed, special reports be prepared and be sent to Illaga Magistrate Sahib and other senior officials and control room be informed. MLR of Parmod Paswan S/o Ram Babu resident of Mohala Shiv Shankar near Kusht Ashram Nawanshahr, police station City Nawanshahr, District SBS Nagar when received will be attested and further investigation will be done. I INSP/SHO and other police officials and complainant is present in civil hospital and busy In Investigation. Sd/- Naresh Kumari INSP/SHO P.S City Nawanshahr Date 31-10-2023, today at Civil Hospital Nawanshahr at 1:45 Am. Today at Police Station: on receiving of written statement a case under above mentioned sections against above mentioned persons has been registered, copy of FIR along with original statement is being sent by hand through SCT Mandeep Singh 1090/SBSN to INSP Naresh Kumari 219/FRT Main office- P.S. City Nawanshahr. Special reports are being prepared and being send by hand through SCT Mukesh Kumar 919/SBSN to Illaqa Magistrate and senior officers. Control room being informed.'

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 on the basis of statement of the complainant Rajat Kumar who was allegedly not present at the scene of occurrence. He submits that no overt act has been specifically attributed to the petitioner who is in custody since 31.10.2023 and nothing incriminating



is to be recovered from him. He further submits that it is a case of version and cross-version.

He has further argued that the antecedents of the petitioner are clean and 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 18 Prosecution Witnesses, 02 have 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 almost 10 months.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail. He informs the Court that in the present FIR challan stands presented on 27.01.2024 and charges stands framed on 05.08.2024.

4. Analysis

From the above case it can be culled out that nothing concrete is coming forth after the completion of the investigation regarding the injury attributed to the petitioner but admittedly no fatal injury is attributed at least to the petitioner. It is a case of the prosecution as pointed out by learned State counsel that fatal injury was caused on the head with *gandasa* to the deceased Vishal by co-accused Pramod and there is a cross version in the case as well. However, this Court is sanguine of the role attributed to the present petitioner wherein no specific role is attributed to him and to deny



the concession of bail at this stage or to invite Section 302 IPC, 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 27.01.2024 and charges stands framed on 05.08.2024, out of 18 prosecution witnesses, only 02 have been examined so far.

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 439 Cr.P.C. on his/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

03.09.2024
Sangeeta

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