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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42887-2024
DECIDED ON: 18.09.2024

PARDEEP @ OBBO

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajesh Nain, Advocate
for the petitioner.

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 BNSS, 2023 for grant of regular bail to the petitioner in FIR No.373, dated 19.09.2022, under Sections 147, 149, 302, 307, 323, 341, 364 IPC (Sections 216, 325 IPC added later on and deleted Section 307 IPC), registered at Police Station Narwana City, District Jind, Haryana.

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

“FIR No. 373 dated 19.09.2022 u/s 302, 307, 323, 341, 364, 147, 149 IPC registered at PS Narwana City, Jind. Contents of which are: Statement of Ram Roop S/o Ratnu caste Jaat R/o Keshar Patti Danauda Kalan aged 32 years. Mob No: 8901311952. Stated that I am the resident of the above stated address and I am an agriculturist. We

are four brothers and one sister. We all reside in our fields of Danauda to Bhikhewala Road. My brother Satyawar and my sister are married. My brother Satyawar has 2 sons, elder one is Gurdeep and the younger one is Madan. My Nephew Madan is studying in KM college, Narwana and after that he do domestic job. Today i.e., on 19.09.2022 at around 09:30 PM my nephew Madan had gone to KM College from our home to collect papers related to study. Then we got information that my nephew Madan had a fight in the college. Then I along with my family members reached Civil hospital, Narwana. There I got to know that my nephew Madan has passed away due to injuries received during fight. Mohit 8/0 Krishan was also admitted in Civil Hospital after sustaining injuries in the fight. Then me and my family members asked about the fight. Mohit s/o Krishan R/o Danauda Kalan told along with Madan s/o Satyawar, us that he Praveen 5/0 Krishan, Ajay S/o Krishan, Deepak s/o Shiv Kumar Sibad, Jatin S/o Pawan, Neeraj S/o Surendra and Ashnain S/o Naresh R/o Danauda Kalan were standing in the park of KM College, Narwana and were talking to each other. Then at around 11:00 AM Sumit @ Justi S/o Salender @Bhuriya caste Barber R/o Narwana came who already had a altercation with Parveen S/o Krishan and keeping in mind the enmity Sumit @ Justi quarrelled with Parveen and thereafter called his friends. His friend came there and started quarrelling with us. Then he along with Madan, Ajay, Jatin and Neeraj got afraid and ran towards Gurthali road on motorcycle. These other friends ran towards the bus stand on foot. Mohit was driving the motor cycle and when he reached near village Gurthali then their motorcycle ran out of petrol they stood on the road and then they were standing on the road and in meantime

Sunil @ Justi, Ankit s/o Magta morpatti, Narwana, Ramesh s/o Soma @ Bobal and Ashok R/o Narwana along with 14/15 others came there on their motor cycles. Mohit and others got scared and then Jatin, Ajay and Neeraj ran away from there. Sumit & Justi S/O Salender @ Bhuriya caste Barber R/o Narwana and others started beating Mohit and Madan with sticks and rods and said that today they will kill them by taking them to KM college. Then they forcefully made them sit on the motorcycle and took us to km college, Narwana. There they caused me and Madan number of injuries to him and Madan. Sumit @ Justi by making him fall on the ground gave injury to Madan on the neck by knee. Then when they raised noise then many boys from the college gathered. On seeing them the above stated boys ran away on their motorcycles. Then the boys from the college only called the ambulance and got they admitted to Civil Hospital, Narwana. Doctors checked Madan and declared him dead. Then they gave me the first aid and referred Mohit to medical college, Police Froce eding: Today 1.6., on 19.09.2022, I was present in the police station, city Nazwana when I got an information from PB Moharr that Madan 3/0 Satyapal R/o Dansuda Kalan has been brought dead at Civil Hospital, Narwana after sustaining injuries in a fight and Mohit 8/0 Krishan R/o Danauda Kalan is Injured. Then I along with HC Sarbinder Singh 389 and SPO Rajesh Kumar 811 along with laptop and printer reached Civil Hospital on government vehicle PCR 9. Then Doctor's ruqa and MLR of injured Mohit bearing no. PK/NRW/2022/30 was received. The doctor had mentioned total 3 injuries and all are KUO BLUNT. Injury no. 1 is mentioned as Adv NCCT Head Surgeon Opinion, Injury no. 2 is mentioned as Adv X Ray Right Forearm, ortho opinion, Injury no. 3

is mentioned as Adv Face X ray Surgeon Opinion. Then I along with other officials reached mortuary, Civil Hospital, Narawana. There Uncle (Chacha) of deceased Madan namely Ramrup and other family members were present. Then Uncle (Chacha) of deceased Madan namely Ramrup after long discussions with the family got recorded the abovestatement. Then after reading, listening and considering the statement to be correct appended his Signature under the statement in Hindi. I verified the same. From the ruga received from doctor, MLR No. PK/NRW/2022/30 and statement of Ramrup offences u/s 302, 307, 323, 341, 364, 147, 149 IPC are made out. So, the same is being sent to PS City Narwana by hand through HC Sarbinder Singh 389 for registration of case. The case be registered and the number be intimated. The special report of case be prepared and sent to Illaqa Magistrate and Senior Officials. The Scene of Crime team be intimated to reach at the spot. I along with other officials are proceeding with Section 174 Cr PC of Deceased Madan. At Civil Hospital, Narwana. Sd/- Rajkumar SI. PS City Narwana. Dated 19.09.2022. At 11:55 PM. Upon receiving the above at police station through HC Sarbinder Singh 389 FIR No. 373 dated 19.09.2022 u/s 302, 307, 323, 341, 364, 147, 149 IPC was registered at PS Narwana City. Then computerised copied of FIR will be prepared and copies of special report will be sent to Illaqa Magistrate and Senior Officials. The case file along with original documents are being handed Sarbinder Singh 389, PS City over to HC Narwana for giving the same to investigating officer SI Rajkumar 190, PS City Narwana for further action.”

3. **Contention**

On behalf of the petitioner

Learned counsel for the petitioner contends that there is an unexplained delay of about 11 hours in lodging of the instant FIR and has been nominated only on the basis of disclosure statement of co-accused. It has been further contended that the no specific role or injury has been attributed to the petitioner and he has nothing to do with the alleged commissioning of offence. It has been contended on behalf of the petitioner that his co-accused, namely Gourav @ Bablu and Sunit @ Sinu, Shiv Karan alias Sumit alias Sam, Sahil and Rahul @ Ramesh have been granted the concession of regular bail by this Court vide orders dated 18.07.2024, 22.08.2024, 27.08.2024 passed in CRM-M-50055-2023, CRM-M-9623-2024, CRM-M-39251-2024 and CRM-M-38853-2024 respectively.

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 does not controvert the fact that co-accused of the petitioner have been granted the concession of regular bail by this Court and the petitioner is at parity with them.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 04 months and 01 days for which the petitioner has suffered incarceration; no specific role or injury has been attributed to the petitioner; the petitioner was nominated as an accused in the instant FIR only on the basis of disclosure statement of co-accused in addition to the fact that investigation is complete, challan stands presented to Court on 29.07.2023, charges stands framed on

28.08.2023 and out of total 48 prosecution witnesses, only 3 witnesses have been examined so far, which is suffice 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 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 discussions made hereinabove, the petitioner is hereby 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

18.09.2024

Poonam Negi

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