



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43218-2024
DECIDED ON: 29.11.2024

KRISHNA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S. S. Mor, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

Mr. Sukhbir Goyat, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.53, dated 04.03.2024, under Sections 147, 148, 149, 302, 341, 120-B IPC and Section 25(1)(a) of Arms Act, 1959 (Section 212 IPC added subsequently), registered at Police Station Hansi Sadar, District Hisar.

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

*“Statement of Balwant Singh S/o Juglal, R/o Kanwari,
Tehsil Hansi, District Hisar, aged 48 years, Mob.*

No.94660-51760. Stated that I am resident of abovementioned address and is an agriculturist by profession. We are three brother and all are married. I am the eldest, thereafter, Nar Singh @ Sanjay who is present Sarpanch of the Village and younger one is Charan Singh. On 03.03.2024, there was marriage of Vikram nephew of Banwari So Kundan, in which my brother Nar Singh @ Sanjay went to attend the marriage. In the evening at about 08/8:15 pm, when my brother Nar Singh @ Sanjay when returning from the marriage in his car bearing No.HR-51BZ-3313 marka Creta of white color. At that time, me and Dharampal S/o Ram Kumar, both were sitting on the Chhabutra of Dharmpal's house. When my brother Nar Singh @ Sanjay alongwith his car reached in front of Karan S/o Mahavir's house, then at that time, 3/4 unknown persons were hiding themselves alongwith pistols in their hands. When Nar Singh's car reach there, then those boys on the directions of Karan S/o Mahavir, suddenly came in front of the car of my brother Nar Singh @ Sanjay to kill him, due to which my brother stopped the car, then they fired upon my brother. Bullets hit on the stomach and shoulder of my brothers. Due to bullet injuries suffered by my brother Nar Singh @ Sanjay, he fell unconscious in the car. When on hearing the noise we ran towards the car, then above said young boys while firing said loudly that Karan Bhai your work is completed and if in future anybody create any problem, then tell us, we will give same treatment to him also. As I reached towards the spot, I saw, Suresh, Shamsher, Kuldeep, Kuldeep and Sandeep sons of Dhoop Singh, Charan Singh and Chattar Singh fleeing away from the spot. I saw all of them are involved in conspiracy to commit the murder of my brother. As I reached on the spot, I saw Krishna, Binu and Sheela

standing on the spot and on seeing me they went inside the house. I alongwith family members shifted my brother to hospital, where he was declared brought dead. Motive behind the occurrence is that Karan S/o Mahabir and other accused were having grudge against my brother and earlier also they attacked on our house and false FIR under Section 307 was got registered against my brother Nar Singh @ Sanjay. Suresh S/o Gyani Ram has contested the election for the post of Sarpanch against my brother Nar Singh @ Sanjay and Suresh lose the election. On the instance of Karan S/o Mahabir, R/o Kanwari, these abovementioned accused have fired on my brother and committed his murder. Strict legal action be taken against all the above accused persons. I recorded my statement to you, heard, which is correct. Sd/-”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the attribution qua the present petitioner is of making attempt to conceal the weapon through her brother-in-law which was used by her son in the commissioning of offence. Apart from above, no other role has been attributed to the petitioner in the commissioning of the offence.

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. Learned State counsel though is in consonance of the aforesaid fact as far as allegations against the present petitioner are concerned but opposing the bail petition asserting that the petitioner has played active role by putting the

investigating agency to work harder for detection of the weapon used in the crime which was actually recovered from son of the petitioner alone. Apart from above, the petitioner is also involved in three more cases.

On behalf of the complainant

Learned counsel for the complainant vehemently contends that the family of the petitioner has a deep rooted criminal background as her husband is involved in multiple criminal cases.

4. Analysis

As far as arguments of learned counsel for the complainant is concerned, it would not impress the Court while considering the petition for grant of regular bail inasmuch as a lady may be of bad fortune for herself having such a husband and the son, who are involved in multiple criminal cases but no direct role is attributed to her in the present case.

The submissions made by learned State counsel is suffice enough to infer that the role of the petitioner as per the prosecution story is highly doubtful and the prosecution is trying to implicate multiple individuals in the present case without there being any sufficient evidence.

Be that as it may, considering the custody period i.e. 07 months and 23 days for which the petitioner has suffered sufficient incarceration and the fact that challan stands presented to Court on 30.05.2024 & 29.10.2024, charges are yet to be framed and none of the prosecution witnesses have been examined so far, meaning thereby the trial is likely to take long time, therefore, this Court is of the considered view that the petitioner deserves the concession of regular bail simply for the reason that a doubtful role has been attributed to the petitioner.

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.

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 hereby directed to be released on regular bail on her 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.

29.11.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No