



211

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

CRM-M-43763-2024 (O&M)
Date of Decision: September 23, 2024

ARJI ALIAS HARJI ALIAS AJIT

....Petitioner(s)

VERSUS

STATE OF HARYANA

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhishek Yadav, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

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.417 dated 12.12.2023, under Sections 25 of Arms Act and Sections 34, 393, 397 of IPC registered at Police Station Rewari City, District Rewari (Annexure P-1).

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

'To, Mr. SHO Sahib Police Station City Rewari Sir, I request that I am Niranjana Lal S/O Shri Raghunath Prasad resident of New Basti Rewari Police Station City Rewari I have a grocery wholesale shop in Ganj Bazaar Rewari Today I was walking from my shop towards Katla Bazaar around 4 o'clock when I took the collect money from the shop of firm Vinay Kumar Neeraj Kumar Katla and put it in the bag and came



out, three young men of were coming from behind me, one of them came near me and called out, I stopped there, after that those young boys told me to take out whatever money you have in this bag and give it to me, in case of not giving, one of them said to me. He showed me the pistol and asked me if I would give him the bag or I will shoot him. All three tried to loot the bag. After that I became alert and held the bag properly and shouted for help. Hearing my voice, Sundar Lal S/O Kashiram resident Bala Sarai from whom I had collected money reached me. Besides, other people from the vicinity also came. Two young men whose names are not known took advantage of the situation and ran away. A boy who had called out to me and asked me to stop had a pistol with him. He also started running and fell down on the way. After that, all the people who had gathered there controlled him. After controlling him, this boy also got some injuries due to falling. After that, Sundar Lal and I asked the boy's name and he told me his name was Arji S/O Ranjeet alias Gopal of Ward No 6, Kharkhoda, District Sonipat. And after that, we tried hard to find out the names of the two boys who had come with him and fled after getting the opportunity, but he expressed his inability to tell their names and addresses. We, on our part, questioned Aarji about the weapon (pistol), but he did not tell us anything. Aarji and his two other companions, whose names are not known, tried to rob the bag containing money that I had with me by showing the weapon (pistol). After that, I, Sundarlal and the traders of Ganj and Katla Bazar informed the police about the incident. After some time, the police reached the spot. We wrote an application about the incident and presented the arrested accused Aarji and the weapon found with him to the police. Justice should be provided by taking the strictest legal action in connection with the incident. SD- Niranjan Niranjan S/O Raghunath Prasad New Basti Rewari 12/12/23 9992384189 Police Action Today SI with HC Jaswant No. 50 with EHC Jagdish No 787 Passenger Vehicle Government No. HR47GV8034 Driver Rajbir HKRNL Patrol Investigation crime was present near Kanod Gate Rewari when Police Outpost Bhadawas Gate received information that 3 young boys have tried to rob a shopkeeper in Katla Bazar Rewari On receiving the information, I SI along with his colleagues on a passenger government



vehicle reached the Katla Bazar, Rewari, where the SI saw a crowd of some people. On reaching the crowd, I SI inquired about the incident. On enquiring, Niranjana S/O Raghunath Prasad resident of New Basti Rewari met the SI and informed him about the entire incident. Thereafter, Niranjana gave a written complaint to the SI along with the above mentioned accused, Arji S/O Ranjeet alias Gopal resident of Ward no 6 Kharkhoda District Sonapat and the accused presented the country made revolver used in the incident. The presenter opened the country made revolver and checked it. On checking it no bullet was found inside the revolver. After that the revolver was measured. On measurement, it was found that total length of the revolver was 21 cm, length of barrel was 7% cm, length of barrel of butt was 16 cm. length of butt was 6% cm. A separate blueprint of the recovered revolver was prepared and the above recovered revolver was taken into police possession as evidence in the present report, on which report the above accused Arji and the witness signed, the above accused Arji and his two other name and address unknown associates together committed the crime under section 393,397,34 IPC 25-54-59 ARMS Act, for registering the report, the FIR was registered with EHC Jagdish No No. 787 It is being sent to police station after registration and registration of slip number, on the basis of the case falling under special category, special report of the case should be sent to the special carrier to duty magistrate and officers and I SI should also be informed with the slip number I SI is busy for investigation, today I am busy at the spot, Katla Bazar, Rewari SD-SI DINESH KUMAR PP B GATE PS CITY REWARI DT 12 12 2023 AT 8.15 PM Today, on arrival at police station, case no. 417 dated 12.12 2023 under sections 393,397.34 IPC 25-54-59 Arms Act, Police Station City, Rewari, registered and copies of the First Information Report should be prepared by computer as per rules, and special report of the case should be sent by special carrier EHC Palbir no. 924/ will be sent to the service of Rewari Area Magistrate Sir and Senior Officer or the copy of the original complaint along with the police is being sent to the personal investigator of area EHC.'



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 and the allegations against the present petitioner is of making an attempt to rob the complainant's bag allegedly consisting of cash but the petitioner was apprehended by the passerby and therefore, the robbery was averted. He further points out that other two co-accused who ran away from the spot were arrested later on and were granted bail by the trial Court vide order dated 08.01.2024 and 12.01.2024 (Annexures P-3 and P-4) respectively. Learned counsel for the petitioner submits that no other case is pending against the petitioner meaning thereby, he is not a habitual offender.

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 09 months 06 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 on behalf of the petitioner.

4. Analysis

From the above case it can be culled out that as far as role assigned to the petitioner is concerned he was present at the spot and was apprehended by passerby, other two co-accused persons who were also part of



the alleged occurrence ran away from the spot and have been enlarged on bail by the trial Court meaning thereby the petitioner is at parity since the robbery could not be executed and nothing incriminating has been recovered from him; there is no other case against the present petitioner meaning thereby, he is not a habitual offender; also the petitioner has already suffered sufficient period in custody i.e. 09 months 06 days 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 08.02.2024; charges stand framed on 06.04.2024, there are total 10 prosecution witnesses, out of which only 06 prosecution witness have been examined, 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 439 Cr.P.C. 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

23.09.2024
Sangeeta

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