



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-44179-2024

DATE OF DECISION: 30.09.2024

AMAN

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanchit Punia, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 of Cr.P.C., 1973/Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been invoked seeking the concession of regular bail for the petitioner in FIR no.303 dated 22.04.2023 registered at Police Station HTM Hisar, District Hisar under Sections 302, 201, 404, 120B, 34 of IPC, 1860.

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

‘Statement of Rajkumar son of Manguram Kamra resident of Rajiv Nagar Hisar now Tenant at Dev Vatika Hisar aged about 65 years 9255414726; stated that I am a resident of the above noted address and I have two sons and two daughters. My elder son namely Yogesh alias Sonu, aged about 40 years, used to work as Night Watchman at Shri Shyam Bhagwan Krishna Kapil Gaushala Shanti Nagar Hisar, since last year. Along with him, two other boys named as Aman son of Subhash Saini resident of Rajiv Nagar, Hisar and Kapil son Mahavir resident of of Aasan, District Jind, also lived in the Gaushala. Today, on dated 22-04-2023, I got the information that my been reached son Yogesh murdered. the alias Sonu On Gaushala my family, whereby, there



which has I alongwith saw that I was lot of blood near the gate and an axe was lying there. My son was bleeding injury on and Kapil the spot. his head. from Now, an Aman are also missing from I do hereby suspect that my son Yogesh has been murdered by Aman and Kapil with an axe on the night of 22-04- 2023. Legal action should be taken against them. Got written my statement, heard it and understood it, is correct. SD/- Rajkumar Attested Balwant PP 12 QTR HSR dated 22/04/2023 Police Proceedings: Today, myself ASI alongwith ASI Vinod 1398 SPO Kulwant and HC Jeevan 1350 were present at the Police Post, that information was received that someone has been murdered in Shanti Nagar Gaushala. receiving the On information, myself ASI along with his fellow employees reached the incident. the After spot of receiving the information, the legal heirs of Sonu Scene the deceased also came Of Crime Dogs-squad were the who Yogesh alias to Team the spot. and also called the at spot. Whereby, Raj Kumar, was present at the spot of the incident, got his above mentioned statement recorded. To whom the statement was read out and explained to him, approving his statement who as correct, put his signature in Hindi below his statement, whose sign have been verified by the ASI; whereby, according to the statement and circumstances at the spot of the incident, it is found that the offence under section 302/34 IPC has been committed, hence due to which the instant information has been sent to the police station by hand of HC Jeevan 1350 for the registration of FIR, after registration of the FIR, the case number should be informed. The special reports of the instant should be sent to higher Officers. The SHO sir and DSP sir were informed. I the ASI am busy for the proceedings. Today, purpose at of Gaushala Shanti Nagar, Hisar, Balwant ASI 750 I/C PP 12 QTR Hisar Dated 22-04-2023 AT 08:15 AM. Mobile No.8814011322; Action at Police Station: On receipt of the said information in the police station, the FIR of the above mentioned offence is being registered; preparing the computer copies of the FIR; the police file and the actual complaint is being handed over to the ASI who brought incoming and is being sent Investigating Officer purpose the of special to for



the Investigation. And reports of the instant FIR are being sent to the Illaga magistrate Mrs. Sonia JMIC Hisar; Duty Magistrate Sh. Sunil Kumar, JMIC, Hisar on their Email ID and it is being sent to the e-mail ID of SP sir at rdrsphsr@gmail.com and to the e-mail ID of the Halqa Officer and in future also, report of be the special the instant FIR will sent to the service of the Duty Magistrate and the Higher officials. The Station House Officer has been informed about the instant telephone.'

3. In compliance to the previous order dated 12.09.2024, learned State Counsel on instructions from the IO who is present in Court submits that the cowshed in question where the alleged occurrence took place has a concrete lanter/roof over which the prosecution has shown the petitioner's presence. He was standing as a guard, guarding the whole occurrence whereas Jitender @ Kapil allegedly committed the murder with axe.

4. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that as per the prosecution case, Jitender @ Kapil himself prepared the video on his own mobile phone and submits that the petitioner was present on the roof guarding the whole incident. He submits that it is not probable that Jatinder @ Kapil who is alleged to have murdered the deceased, would prepare the video himself of the whole occurrence. Besides, 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, only three have been examined so far.

On behalf of the State

Learned State Counsel on the other hand would though



vehemently contend that since the video prepared by the police later on, shows a lanter/concrete over the cowshed that is the alleged place of the occurrence which is made part of the challan but in the site plan admittedly roof has not been shown.

He has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year, 4 months and 16 days. He informs the Court that in the present FIR challan stands presented on 19.07.2023 and charges stands framed on 18.10.2023.

5. **Analysis**

Be that as it may, the existence of the roof has been questioned by the petitioner, admittedly not shown in the site plan by the investigating officer which is part of the challan but might be visible in the video added in the challan as one of the material evidence, wherein admittedly as per the State Counsel having specific instructions from IO who is present in the Court to assist him, the petitioner is not visible in that video as well. In that video, it is co-accused Jitender @ Kapil who is seen to be committing the said crime which was prepared by Jitender @ Kapil himself.

In light of the aforesaid disputed facts qua the existence of the roof and admitted fact that the petitioner is not visible in the video which is part of the challan, who has already been incarcerated for 1 year, 4 months and 16 days so far cannot be detained behind the bars for an indefinite period 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 19.07.2023 and charges stands framed on 18.10.2023 and out of 18 prosecution



witnesses, only 3 have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time.

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.”

6. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail 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

30.09.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>