



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45326-2024
DECIDED ON: 17.09.2024

MUBIN ALIAS RAGDA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vimal Kumar Gupta, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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.311, dated 26.06.2023, under Sections 147, 149, 323, 506 IPC (Sections 325 and 302 IPC added later on), registered at Police Station City Sohna, District Gurugram.

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

“The statement of Isab Khan son of Muneera Khan resident of Mohammadpur Gurjar Police station City Sohna Gurugram mobile number 9812395389 is about 65 years stated that I am resident of above mention address, and I do agricultural work. On 25/6/2023 about 4:00 PM in the evening I was present at my house and at

that time my wife Jarina was coming back from barn (where cattle's are being tied) after opening the buffaloes and at that time Rahul son of Akbar son of Subhan Khan and Noren wife of Akbar were throwing cow dung on our fuel upon this my wife Jarina told them that they should not do like this upon this Rahul and Noren started giving abusive language to my wife and they also started giving beatings to my wife and since I and my children were at home and when we heard the noises of scuffle, we also went there and at that time Akbar son of Subhan Khan, Khursheed son of Akbar, Ameen son of Subhan Khan, Razia wife of Ameen, Noornisha wife of Jamshed, Mubeen alias Ragdra son of Subhani, Rukmina wife of Sohail, Sohail son of Mubeen, Saddam son of Akbar, Irfan son of Rukmudeen, Miskina wife of Khursheed, Shahid son of Ameen, Najma wife of Irfan, they all gathered there and they had attacked us with their respective sticks and lathes and started giving beatings to us Khurshid has given injury to my son Salman on his left eye with the help of stick/lathi. Akbar has also given injury to my son with stick/lathi and he had also given injury on my left hand wrist, khursheed and Saddam, Alam and Rahul had also given injury on my right shoulder and Akbar has attributed his lathi blow on the head of Jumme Khan and they had pulled my son Salman and made him to lie on the floor and they had given beatings to my son thereafter I and my son Salman and Jumme Khan came to Sohna Hospital Government Hospital for treatment thereafter doctor has referred us to some other Hospital for treatment, they all had given injuries to us without any reason. Kindly take strict legal action against them and our life and liberty may kindly be protected from them. LT Isab Khan, Attested ASI Krishan Chander Police Station City Sohna dated 25.6.2023.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that as per the prosecution story, the present petitioner along with other co-accused persons with common intention attacked the deceased Salman and his family members. He further contends that the petitioner has been falsely implicated in the present case as no specific role or injury has been attributed to the petitioner. It has been contended on behalf of the petitioner that nothing is to be recovered from the present petitioner and, therefore, his custodial interrogation is not required.

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 seeks dismissal of the instant petition on the ground that the petitioner along with other co-accused person with common intention attacked the deceased Salman and his family members.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 02 months and 03 days for which the petitioner has suffered incarceration; no role or injury has been attributed to the petitioner; nothing is to be recovered from the present petitioner, therefore, his custodial interrogation is not required in addition to the fact that investigation is complete, challan stands presented to Court on 20.10.2023, charges have been framed on 04.11.2023 and out of total 15 prosecution witnesses, only one witness has 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.

17.09.2024

Poonam Negi

**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No