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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45344-2024
DECIDED ON: 17.09.2024

SANDEEP SINGH ALIAS SONI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Inderpreet Singh Kooner, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of the BNSS, 2023 for grant of regular bail to the petitioner in FIR No.26, dated 24.02.2022, under Sections 379-B of the IPC 1860 (Section 411 and 201 of IPC added later on), registered at Police Station Kotwali Patiala, District Patiala.

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

"At this time statement Raju son of Sita Ram r/o House No. B-18/305 Samania Gate Patiala Age about 47 years Mo: No: 98884-24457 written by ASI Balkar Singh Division No. 2 Patiala for registering a case against unknown person/persons vide hand of C Surinder Kumar 1571/Pt was received at police station details of which are," stated that I am a resident of the



said address and I work as a license maker in the office of the District Transport Officer. I yesterday on 23.02.2022, the time was around 9:45PM that I came out to Sabji Mandi side to have my meal and then suddenly I got a call from a friend for which I put the phone to my ear to listen to the call. A motorcycle Splendor number PB-11-CD - 1391 came from Hanuman temple Patiala side whose driver whose profile is as following:- age about 25 years wearing gray jacket and blue jeans and whose beard hair was cut. I can recognize him if he is produced before me. That when I came a little further to Binni Gas Agency Patiala, he snatched my mobile phone Redmi 7A which I was using to hear the call. The bill of which I will present myself later, and then this person drove away with his motorcycle. He snatched my mobile phone and ran away. I also chased for a long distance at that time and raised hue and cry but I could not succeed in catching him. When I was coming to the police station, I came to know that yesterday on 23.02.2022, around 9:40 PM, from Rahul Goyal son of Fakir Chand, resident of 32 Motya Enclave, near Mahindra College, Patiala, while going to Mahindra College, Patiala a mobile phone was snatched at Bhagat Singh Chowk Phone 11 color white and from Arjan son of Lakhan Singh resident of village Fatehpur police station Pasiana near Fuara Chowk Patiala Mobile phone mark WE Y-20 and from Kuljit Singh son of Swaran Singh resident of house number 327/4 bank side division number 2 Gahari Saaj Mohalla Patiala side phone Samsung Color white A32 has also been snatched from Sabji Mandi Patiala. I met you near Hanuman Mandir. You have written a statement. It is correct. Action should be taken. Sd/-Raju Verified. Police Proceedings:- Today I, ASI including C Gurpreet Singh No. 3438/Pti, C Surinder Singh No. 1571/Pti were present in Hanuman Mandir Patiala in connection with patrolling in a private vehicle and searching for suspicious and bad men. Then Raju met the said person and he recorded his



statement with me and read it word by word. Who, having read and heard and believed it to be true, signed his statement in English, which was verified by the ASI. From the statement is an offense under 379 B IPC is made out. The said statement is being sent to the police station of vide hand of C Surinder Singh No. 1571/Ptl. A case should be registered and the case number should be informed. Special reports should be issued and the UC Control Room, Patiala should be notified via W/M. I am present on spot with fellow employees. At:-Hanuman BHS Parikshaka, At:-07:00PM, Latitude:-30.319394, Longitude:-76.401403. Sd/-ASI, P.S. Mandi Patiala, Date: - 24.02.2022 Statement was received and a case of the said crime against the said unknown person was registered and the record was sent to the police station. Copies of the FIR's with special reports and handed over to PHG Gurdarshan Singh 18486 and sent to area Magistrate and Senior Officers. In charge control room Patiala is being informed W/M. original statement including original statement is being sent vide hand of C Surinder Singh 1571/Ptl to ASI Balkar Singh Division No. 2 Patiala for further action. Closure report: DDR No:-50, At:-07:45PM, dated:- 24.02.2022.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case, as earlier the instant FIR was registered against unknown persons and thereafter the petitioner has been roped in the present case only on the basis of disclosure statement. There is also a delay of one day in lodging the instant FIR. It has been contended on behalf of the petitioner that nothing is to be recovered from him 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 stating that the petitioner has actively participated in commissioning the offence.

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e. 05 months and 21 days and his name not initially being mentioned in the instant FIR; nothing is yet to be recovered from the present petitioner, therefore, his custodial interrogation is not required in addition to the fact that investigation stands completed and challan stands presented on 14.02.2024 and charges having been framed on 07.06.2024 also out of total 17 prosecution witnesses, only three witnesses have been examined yet, which is suffice for this Court to infer that the conclusion of the trial will take a considerable amount of 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

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No