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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45397-2024

DECIDED ON: 17.09.2024

IMRAN

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashish Jhamb, 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 483 of the BNSS, 2023 for grant of regular bail to the petitioner in FIR No.350, dated 29.05.2024, under Sections 365, 379A, 506, 384, 34 of the IPC 1860, registered at Police Station Mujesar, District Faridabad.

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

“To, Police Station Incharge, Sanjay Colony, Faridabad, sir, it is requested that I Rajesh Kumar Patel, s/o Sh. Ram Ek Bal Patel, r/o Rampur Khajuriya, P.S Dumariya, Motiheer, Bihar, presently r/o rented H. No. 9, Kapasiya House, near Sudershan Hospital, Mukesh Colony, Ballabgarh, Faridabad. Around 4-5 before, I got a call from unknown girl who started talking to me. On 28.05.2024, I met that girl in the market about 11:30 PM and she requested to drop her near Sarurpur Puliya, due to non-availability of any vehicle I came drop her at Sarurpur



Puliya, on which the on my motor cycle bearing No. HR-29AA-5963, but on the way she called four unknown persons, who came there on two motor cycles and intercepted me and thereafter, they made him sit on their motorcycle and forcibly took me nearby bushes, where they assaulted me and snatched Rs. 5,000/-, two Samsung Mobiles A34 and A12S and after taking Pin of Phone Pay App, they transferred Rs. 1 Lakhs from my account to their account and while leaving they threatened me with dire consequences if I give any complaint in police. Requested to kindly take appropriate action against them.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. It is further contended that neither the petitioner is named nor there is any specific allegation qua him as asserted in the instant FIR. The name of the petitioner has been nominated in the present FIR only on the basis of disclosure statement as suffered by the co-accused. Moreover, there is a delay of five days in lodging the instant FIR. The allegation against the petitioner is that he received the extortion amount to the tune of Rs.70,000/- from the account of one Rihana, but there is nothing on record to show that he has received the said amount. 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 stating that the allegation against



the petitioner is of kidnapping the complainant and; snatching his mobiles and extorting a sum to the tune of Rs.1,00,000/- by transferring the same to the account of one Rihana who is his relative. It is submitted that an amount of Rs.70,000/- is found to be transferred in the account of the petitioner from the account of Rihana.

4. **Analysis**

Be that as it may, considering the custody period undergone by the petitioner i.e. 03 months and 07 days, whose name has been figured in the instant FIR only on the basis of disclosure statement as suffered by other co-accused added to the fact that the petitioner is not involved in any other case whatsoever, meaning thereby, he is a person of clean antecedents; In the instant case, the investigation is complete and challan stands presented to Court on 30.07.2024 wherein the prosecution has cited 18 witnesses, 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

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No