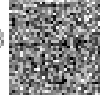




Ludhiana. on 09.04.2023, I and my friend Vinay Kumar, we were on our motorcycle, went to eat Momo's at near Green Land LIG Road, Near K Deep hospital Ludhiana. when at about 10:00 PM, I and my friend Vinay Kumar started riding the motorcycle after eating Momo's. then Diljot Singh son of Randhir Singh resident of House No- 157/LIG Fiat Folic Station Division No. 7 District Ludhiana was having 'Iron datt' in his hand, Ashu Kumar was having Sword in his Hand, Sonu alias Chah-Pati was having Sword in his hand and Sonu Chugian and Shubham alias Dabba and Arjun Kumar were having 'Iron Datt' in their hands. 10-12 unknown persons were along with them rounded up me and my friend Vinay Kumar and started abusing us and raised Lalkara's and Diljot Singh hit on my head with 'Iron Datt' from reverse side, which hit above on my left eye and I fell on the ground and fainted, after that I did not know and these peoples beat me up and also beaten my friend Vinay Kumar, my friend Vinay Kumar raised alarm and passerby started gathering on spot, on seeing gathering of passerby, these peoples ran away from spot along with weapons while threatening to kill. My friend Vinay Kumar made me conscious and tied cloth on my head and took me home. My father Tilak Masih got admitted me and my friend Vinay Kumar in Civil Hospital Ludhiana, where doctor gave stitches on my head and gave stitches to my friend's head and sent us home after cut the M.L.R and next day I got my head MRI scan. Motive behind this, that my friend Bunty had fight with Shubham aliad Dabba, due to which these peoples beaten me and my friend Vinay Kumar. Due to injury on my head, I could not come to police station to report. Now I was going with my father to report to police station, you met us. Please take legal action against Diljot Singh, Ashu Kumar, sonu alias ChahPati, Shubham alias Dabba, Arjun Kumar, Sonu Chugian and 10-12 unknown persons, to whom I can indentify when they before me. come I have recorded my statement to you, heard,



found correct. Sd/ Mohit Masih, attested Sd/ Tilak Masih certified by Sd/- Kuldeep Singh ASI 214/Ldh Police Station Division No. 7 Ludhiana Dated 11.04.2023.'

3. On the last date the following order was passed :-

'Contends that petitioner is in custody since 11.07.2023. After investigation, report under Section 173 of Cr.P.C. was presented on 11.09.2023, but charges are yet to be considered.

Also contends that there is no specific injury attributed to the petitioner.

Learned State counsel seeks time to verify the above factual position.

Posted for 05.08.2024.

In the meanwhile, petitioner be released on interim bail in the present case, till the next date of hearing, on furnishing adequate bail and surety bonds subject to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned.'

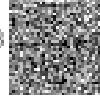
4. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been in custody since 12.04.2023 and no injury has been attributed to the petitioner. He points that on the last date the interim bail was granted by this Court furnishing adequate bail and surety bonds subject to the satisfaction of learned trial Court/CJM/Duty Magistrate concerned and State Counsel sought time to verify the factual position.

On behalf of the State

On the other hand, learned State Counsel appearing on

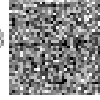


advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 9 months and 24 days and has verified the facts mentioned in the last order dated 07.05.2024 which are found to be correct but he opposes the concession for grant of regular bail on the ground that the petitioner is involved in one more FIR i.e. FIR No. 447 dated 23.10.2017 registered under Sections 379-B/411/148/149/323 IPC at P.S. Jodhewal.

5. **Analysis**

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 9 months and 24 days, the petitioner was granted interim regular bail on the last date i.e. 07.05.2024, 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 18.12.2023 and charges are yet to be framed and out of 14 prosecution witnesses, none has been examined so far 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.

Reliance can be made 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

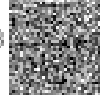


or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“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.

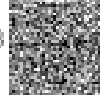
4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an 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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed 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.

As far as the pendency of other cases and involvement of the petitioner in other FIR is concerned, the petitioner is on bail in that FIR and reliance can be placed upon the order of this Court rendered



in CRM-M-25914-2022 titled as “*Baljinder Singh alias Rock vs. State of Punjab*” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

6. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his already furnished bail and surety bonds vide order dated 07.05.2024 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

05.08.2024
anuradha

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