



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45106-2024 (O&M)
Date of Decision: September 16, 2024

RAKESH KUMARPetitioner(s)
VERSUS
STATE OF PUNJABRespondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Devansh Gupta, Advocate for
Mr. Rahul Arora, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS has been invoked seeking the concession of regular bail for the petitioner in FIR No.175 dated 06.04.2024, under Sections 379, 411, 420, 465, 467, 471 and 472 of IPC registered at Police Station City Ferozepur, District Ferozepur.

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

'SHO Police Station Ferozepur 'Jay Hind'. Today, IAS along with ASI Rajendra Pal 1300/Fzr HC Gurvinder Singh 494/Fzr HC Balaur Singh 66/Fzr, Senior Sepoy Rupinder Singh 766/Fzr, Sepoy Sachin Kamboj1412, PHG Ramandeep Singh No. 11745 with Laptop & Printer on private vehicle were going towards Shaheed Udham Singh Chowk, Agarsain Chowk, Housing Board Colony etc. in connection with patrolling and checking of suspected persons. During patrolling when police party was present at Shaheed Udham Singh Chowk, Ferozepur City, then special informer got stopped our vehicle and came near to me and informed that Gurdeep Singh son of Baj Singh resident of near



Patrol Pump Bhatian Wali Basti and Rakesh Kumar son of Ashok Kumar resident of Quarter No. 579, Housing Board Colony, Ferozepur City are stealing Tempos from different cities and after changing their registration number, chassis number and engine number and after getting fabricated documents prepared, they used to sell the same further. That today both have displayed their Tempos near Housing Board Colony, are moving around on Motorcycle to sell them. If a raid is conducted now near the park of Housing Board Colony, then both of them can be apprehended. Information of the informant is trustable. That in this way by stealing/committing theft of Tempos and after changing their Registration Numbers, tempering & sealing their Engine Numbers & Chassis Numbers and preparing their fabricated documents, by selling them further Gurdeep Singh son of Baj Singh resident of near Patrol Pump Bhatian Wali Basti and Rakesh Kumar son of Ashok Kumar resident of Quarter No. 579, Housing Board Colony, Ferozepur City have fulfilled provisions of offence under Sections 379, 411, 420, 465, 467, 471 & 472 IPC, against whom ruqa was written and was sent to the Police Station through PHG Ramandeep Singh 11745 for registration of case. After registration of case, case number be informed. Information be sent to PCR through wireless message. I/ASI along with fellow employees for raid and recovery are departing to the spot. On the way effort will be made to join public witness in the police party. Today, at Shaheed Udham Singh Chowk, City Ferozepur. Sd/- Sharma Singh ASI, Police Station City Ferozepur dated 06.04.2024 at 4:35 PM. Today at Police Station: Today on receipt of above Ruqa at Police Station after registering aforesaid case under aforesaid offense(s) against above accused, copy of FIR along with original Ruqa were sent to the ASI at the spot through incoming PHG. Information to PCR/Ferozepur is being supplied.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner argued that the petitioner has been falsely implicated in the present case. He contends that recoveries



regarding the stolen Motorcycles shown from him has been planted upon him, the petitioner has neither committed any theft of any vehicle nor has forged any document. Learned counsel for the petitioner submits that the petitioner is in custody since 06.04.2024. He submits that the Chief Judicial Magistrate, Ferozepur, has framed charges only under Sections 465, 467, 471 and 411 IPC vide order dated 03.08.2024. He further submits that there is no other case pending against the petitioner meaning thereby he is not a habitual offender.

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 almost 05 months 03 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 03.06.2024; charges stand framed on 03.08.2024.

4. Analysis

From the above case it can be culled out that the Chief Judicial Magistrate, Ferozepur, has framed charges under Sections 465, 467, 471 and 411 IPC only in its order dated 03.08.2024, therefore, the petitioner is entitled to bail particularly in the light of the fact that once charges under Section 379 IPC have not been found viable for prosecution of the present petitioner, the question of forged documents qua the alleged stolen vehicle would also be doubtful and in that eventuality the petitioner would have strong probability of

earning the acquittal and it is, therefore, on that account it would be unjust to



keep the petitioner behind the bars any further 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 03.06.2024; charges have been framed on 03.08.2024 and out of total 23 prosecution witnesses, none has been examined yet 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 would solve no purpose.

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 the 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 aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 483 BNSS 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.

(SANDEEP MOUDGIL)
JUDGE

16.09.2024
Sangeeta

Whether reasoned/speaking: *Yes/No*
Whether reportable: *Yes/No*