

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

208

CRM-36723-2024 in/and
CRM-M-45164-2024

DATE OF DECISION: 05.12.2024

ISHWAR SINGH @ KHOTA

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Kashish Aggarwal, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)1. **Relief Sought**

This petition has been filed under Section 483 of BNSS for grant of regular bail in FIR No. 29 dated 21.03.2023 under Sections 302, 323, 506 and 34 IPC, 1860 registered at P.S. Qadian, District Gurdaspur.

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

‘Statement of Mangal Singh son of Kashmir Singh resident of village Salahpur Police Station Qadian aged about 45 years Mobile No. 9915638821. He stated that I am resident of aforesaid place and do the labor work and I got married to Ranjit Kaur around 25 years back, out of the wedlock a son named Sukhpreet Singh was born, who was aged about 19 years. My wife had got expired around 1 year back, upon which in my family, me and my son Sukhpreet Singh @ Sajjan lived. Simranjeet Singh @ Lucky son of Balwinder Singh resident of village Salahpur of my village had lend me Rs. 200/- around 3-4 months back. On 20.03.2023 around 8:30 PM, Simranjeet Singh @ Lucky came to my house to take back the abovesaid money. At that time, me and my son, Sukhpreet



Singh @ Sajjan were present at house. At that time, I told Simranjeet Singh that we would return your money back, upon which he went back. Then after approximately half an hour, I went to road outside my house, where Simranjeet Singh @ Lucky son of Balwinder Singh carrying wooden mungla Ishwar Singh @ Khota son of Mulagar Singh carrying datar, Jaspal Singh son of Mahinder Singh resident of village Salahpur empty handed came towards me. Upon which, Simranjeet Singh @ Lucky raised lalkara and said that let's teach them the punishment for not returning my money. Whereupon Simranjeet Singh @ Lucky gave wooden mungla blow 7 times at me, which hit the left corner of my left eye, on my right knee, on my left knee, at the ankle of my right leg, at the ankle of my left leg, at the elbow behind my right arm and at the elbow behind my left arm. I raised hue and cry of maar ditta maar ditta, in meanwhile my son Sukhpreet Singh @ Sajjan and my nephew, Gurjant Singh son of Rattan Singh resident of village Salahpur came to the spot. When my son stepped in to save me, then above- mentioned persons, along with their respective weapons, hit injuries upon the head of my son, at the nose and upon toe of his left foot. My son, Sukhpreet Singh @ Sajjan started oozing blood and fell unconscious on the ground. This entire incident was eye- witnessed by Gurjant Singh son of Ratan Singh resident of village Salahpur. When me and my nephew, Gurjant Singh raised hue and cry and after seeing my son covered with blood, aforesaid persons escaped along with their weapons while abusing and extending threats. Me and my son were brought to Noor Hospital, Qadian after arranging for vehicle by my nephew, Gurjant Singh. Me and my son, Sukhpreet Singh were given first-aid there and by citing the health of my son to be critical, he was referred to Shri Guru Ramdas Hospital, Amritsar. He was taken to Amritsar by Gurjant Singh and I went to home after getting first-aid. Thereupon, on 21.03.2023 I went to Government Hospital for treatment as I had pain in my left eye and it was bruised, where doctor gave me the slip of doctor opinion and referred me to Civil Hospital, Batala. During this while, I came to know that my son, Sukhpreet Singh @ Sajjan has succumbed to injuries during the



treatment in Guru Nanak Dev Hospital, Amritsar. And as when I was going along with my nephew, Gurjant Singh son of Ratan Singh resident of village Salahpur to Civil Hospital, Batala from Government Hospital, we have met you. I have produced before you the MLR given by Doctor and have got recorded my statement before you which has been read over to me and is correct. I request you to initiate legal proceedings against the aforesaid accused persons. Sd/- Mangal Singh Mangal Singh. Verification Sd/- Sukhraj Singh INSB SSP Police Station Qadian. Dt. 21.03.2023.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that only the allegations against the petitioner are that he was armed with datar and has given injury on nose and toe of the left foot of the deceased which have been declared to be blunt and simple in nature. Apart from that, there is no other incriminating material coming forth against the present petitioner to invoke Section 302 in as much as the fatal injury on head near the left and ear and middle of the head was admittedly given by co-accused Simranjit Singh @ Lucky which was earlier found to be grievous but unfortunately due to death of the deceased Section 302 was added. He has further argued that the antecedents of the petitioner are clean, therefore, prays for grant of regular bail to the petitioner.

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 1 year, 8 months and 8 days.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the allegations levelled against the petitioner are serious in nature and he was specifically named in the FIR and played active role in the occurrence, but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 year, 8 months and 8 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, and the trial since framing of charges on 09.08.2023 is moving at snail pace as is evident from examination of witnesses wherein only one PW has been examined out of 13 cited witnesses by the prosecution and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt. From the above discussion, this Court can infer that the conclusion of trial is likely to take considerable time and therefore, 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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds 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

05.12.2024
anuradha

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