

2024:PHHC:128181



231 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3133-2024
DECIDED ON:26.09.2024

MOHIT

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHERRESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Mehak Sawhney, Advocate for
Dr. Deipa Singh, Advocate
for the appellant.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

Mr. Varun Gupta, Advocate
for respondent No.2.

SANDEEP MOUDGIL, J

1. Relief Sought

The present appeal has been preferred against the impugned order dated 12.09.2024, vide which the petition seeking grant of regular bail to the appellant has been dismissed by Additional Sessions Judge, Panchkula.

2. *Facts*

The factual matrix of the present case is that the present case stands registered on the basis of statement made by complainant-Ratul Birla alleging that he is a resident of the above address and am a first year student of BCA in SD College Sector-32, Chandigarh. They are two brothers. His father works in FCI in Orissa and his mother Sushila is a Government Teacher in Punjab. He has previously studied in Gurukul School, Sector 20, Panchkula, till class 10th and a girl named Chhavi, resident of Jikarpur, also studied in his school. They were good

friends. Sometimes they used to talk with each other. Chhavi is also a friend of a boy named Saksham who lives in his society and lives in flat number 502. On 23.02.2024 at around 7 PM Saksham called him to meet him in the parking lot of BLISS Hospital Sector-20, Panchkula. When he reached there, he saw that Saksham was already standing in the parking lot with 15-20 boys and Saksham was holding a wooden stick in his hand. He told him why do he talk to Chhavi and stop talking to her. So he said that there is nothing like that, he only talk to Chhavi as a friend sometimes, then Saksham started beating him with a stick and other boys started kicking and slapping him and Agreeem Naam The boy started making videos on the phone. After that, he freed himself from there and reached Sun City Parikrama market and from there he called Saksham's father Mohit (present petitioner) and told him that Saksham was assaulting him along with 15-20 boys. From which he is running away and he is in the market of Sun City. You call Saksham and explain to him not to assault him. After that he called his friends Keshav and Harsh and told them everything and asked Saksham to save them. Before this, his friends Vansh and Varun were coming to meet him in Sector-20, Panchkula. He called him also and called him to Sun City Parikrama market. Then they left from there in his friend Varun's Santro car and when they reached near the vacant ground at 20 Panchkula where a vegetable market was situated. They stopped there so that Saksham could calm down. But then Saksham's friend Agrim saw them there and then Saksham also came there in car and bike along with 8-10 other boys. Then they surrounded them there too and Saksham started beating him with sticks and also broke the glass of his friend Varun's car. After that, they ran towards his society to save their lives and when they reached the main gate of the society, Saksham's father Mohit (present petitioner) was already standing at the gate. Seeing this, they stopped and

got down from the car and asked Saksham to explain and then Saksham also reached there with his friends and instigated his father and joined him and Saksham's father Mohit (present petitioner) ran from the guard room with a stick and hit him. He started beating him vigorously and he said, 'Uncle, please listen to me first'; but he did not listen to him and continued to beat him. At that time his mother had also come at the same spot and she tried to free him and started pleading with folded hands in front of Mohit (present petitioner) uncle but he continued to beat him. Then Saksham attacked him from behind with the intention of hitting him on the neck, head and waist with a glass bottle and his friends attacked him repeatedly with iron punches in their hands. Due to which he started bleeding profusely and his mother became very nervous and fainted on the spot. A large crowd of people had gathered there and Saksham along with his friends started saying to him that today he somehow survived, but in the future they will kill him. With great difficulty the mob freed him from those people and took him to Alchemist Hospital, where he is still taking treatment. Saksham, his father Mohit (present petitioner) and 15-20 other boys together tried to kill him twice by chasing and surrounding him. The complainant sought strict legal action against the culprits.

3. *Contentions*

On behalf of the petitioner:

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. She further contends that no specific role has been attributed to the present petitioner. Moreover, the injury which falls under the ambit of Section 307 IPC has been attributed to the co-accused of the petitioner. No other case is pending against the petitioner meaning thereby, he is not a habitual offender.

On behalf of the State :

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner has suffered incarceration for a period of 3 months and 23 days.

Learned State Counsel on instructions from the Investigating Officer informs the Court that in the present FIR challan stands presented on 29.07.2024 wherein, total 33 prosecution witnesses have been cited.

On behalf of the complainant:-

Learned counsel for the complainant has opposed the prayer made in the present petition stating that the accused and respondent-State has misled the Court by stating the wrong facts that Section 307 has been deleted whereas, it is otherwise.

4. Analysis

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 29.07.2024 wherein, total 33 prosecution witnesses have been cited, which is sufficient for this Court to infer that the conclusion of trial shall 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 on his furnishing bail and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

In the afore-said terms, the present appeal 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

26.09.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>