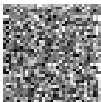


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2024:PHHC:148861



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRA-S-3150-2024 (O&M)  
DECIDED ON: 18.11.2024

PARDEEP ALIAS MINIYA ALIAS MEENU

....APPELLANT

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aditya Sanghi, Advocate and  
Mr. Himanshu Garg, Advocate  
for the appellant.

Mr. B.S. Virk, Sr. DAG, Haryana.

None for respondent No.2.

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SANDEEP MOUDGIL, J (ORAL)

CRM-43738-2024

This is an application for placing on record the statement of witness of prosecution i.e. PW-4-Krishan Kumar son of Ram Singh, examined before the trial Court as Annexure P-9.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Annexure P-9 is taken on record.

Application stands disposed of.

**CRM-37800-2024**

This is an application for seeking exemption from filing certified copy/true typed copy of appended Annexures and for permission to place on record the same.

For the reasons mentioned in the application, the same is allowed. Appended Annexures are taken on record. Exemption sought for is granted.

Application stands disposed of.

**CRA-S-3150-2024****1. Relief sought**

The present appeal has been preferred by the appellant seeking grant of regular bail in FIR No.339, dated 03.06.2022, under Sections 302, 323, 34, 506 IPC and Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Adampur, District Hisar, Haryana.

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

*“Statement of Krishan Kumar son of Ramswarup R/o Mandi Adampur aged 45 years, Mobile Number 9729272855, Stated that I am resident of above mentioned address and am doing labour work, I have one son Shubham and two daughters their names are Karina, Umang, my elder daughter Karina around 3 years back had solemnized love marriage with Jai Bhagwan S/o Ramchander R/o Mandi Adampur, amid which around 1 years back Sagar, Kewal and others had assaulted my son Shubham. Yesterday dated on dated 02.06.2022 my son Shubham had gone to the Tomb of Peer Baba Khara*

*Barwala then my son Shubham about to go to his friend Gautam son of Jogiram R/o Khara Barwala at his house then my son reached near the house of Prithvi Nambardar then at the same time from a white coloured Swift Car Sagar son of Hanuman alias Hanu, Kewal son of Pandu Residents of Mandi Adampur launched an attack upon him with the Rods and sticks which they were carrying in their respective hands when my son Shubham raised clamour of save-save then crowd gathered there and accused persons fled from the spot, grudge is that my daughter who had solemnized love marriage with Jai Bhagwan, Sagar and Kewal are friends of Jai Bhagwan, me and my family members were against this love marriage, strict action may be initiated against the accused persons, I have recorded my statement, understood it, I have recorded my statement without any pressure and fear in presence of my brother- in-law Ajit Singh, while leaving they have given death threats. Sd/- KRISHAN KUMAR SD/- AJIT SINGH.”*

3. Notice issued to respondent No.2 has been received back duly served.

Despite service, none has put in appearance on behalf of respondent No.2.

Hence, respondent No.2 is hereby proceeded ex parte.

### 3. Contentions

#### On behalf of the appellant

Learned counsel for the appellant contends that the appellant was not initially named in the instant FIR but was subsequently nominated as an accused only on the basis of disclosure statement of co-accused Tony,

Sagar and Kewal. Apart from bald disclosure statement, there is no other incriminating material to connect the appellant with the alleged offence. He refers to Annexure P-9 i.e. statement of complainant Krishan Kumar and submits that the complainant has turned hostile.

**On behalf of the State**

On the other hand, learned State counsel has produced the custody certificate of the appellant today in Court, which is taken on record. Though he does not controvert the factum of complainant turning hostile and having failed to identify the present appellant on account of causing injuries to his deceased son.

However, he seeks dismissal of the instant petition on the ground that the appellant is a habitual offender as he is involved in seven more cases.

**4. Analysis**

In the light of the fact that the complainant himself turned hostile as is evident from Annexure P-9 i.e. statement of complainant Krishan Kumar, who happens to be the father of the deceased Subham, there is strong probability of earning acquittal by the appellant before the trial Court.

After perusal of the custody certificate, it is also evident that the appellant has suffered incarceration for a period of 01 year, 07 months and 02 days in addition to the fact that challan stands presented to Court on 07.06.2023, charges have been framed on 26.09.2023 and out of total 23 prosecution witnesses only four witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a long

time for which the appellant 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, 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 concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the appellant 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.

18.11.2024

*Poonam Negi*

(SANDEEP MOUDGIL)  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |