

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

217

CRM-M-49285-2024

DATE OF DECISION: 16.10.2024

SUBE SINGH

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of Bhartiya Nagarik Suraksha Sanhita, 2023 for the grant of Regular Bail to the petitioner in FIR No.421 dated 10.7.2020, under sections 307, 386, 120-B 201 IPC, 1860 and Section 25 of Arms Act, 1959 (Section 201 IPC was added lateron), registered at Police Station, Model Town, District Rewari.

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

‘Statement of Vikash Yadav son of Surender Yadav, resident of Bithwana, Police Station Model Town, years, District Rewari, aged 39 mobile no. 9812400813, 9416330813. Stated that am resident of above said address. Earlier I used to do business of finance and now working as Commission Agent (Aadhti). Before Lockdown, Chand Mundanwas had called me and told me that his men are incarcerated and also told me expenditure which to is give their about 1-15 lacs, upon which I refused. After this shots were fired upon Bir Singh, resident of Mundanwas and Tillu on separate occasions. At that time I had received intimation from my friends that Vikash, you also be aware, but I ignored it. Today, I was sitting at my vend in Vegetable Market, Bithwana, at that time at about



7.10 AM three young boys came there and fired upon me with intention to kill. After this I had received two gunshot wound at the back of my head and one gunshot wound on my right shoulder, due to which I fell down and they fled towards the road. Chand resident of Mundanwas by hatching a conspiracy with his companions have got fired gunshot upon me with an intention to kill. They by getting firing conducted in public want to make a big name in Rewari. Vikash son Satpal, resident of of Rewari was sitting along with me, who is my partner. Statement got recorded, heard and which correct. Legal action be taken. Sd/- Vikash Attested Ran Singh SI PS Mt.RWR dt. 10.7.2020.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and as per the allegations narrated in the FIR, the petitioner along with co-accused had hatched a conspiracy to kill Vikas Yadav since he had refused to give ransom money demanded by them and the weapon used in the occurrence was allegedly supplied by the petitioner. He submits that neither any weapon has been recovered from the petitioner nor any incriminating material has been produced by the prosecution. He further submits that the petitioner has been in custody since 10.05.2021 and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 50 Prosecution Witnesses, only 29 PWs have been examined so far after framing of charges on 07.06.2022.

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, 7 months and 19 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner has committed a serious offence 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 22.07.2021 and charges stands framed on 07.06.2022.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 1 year, 7 months and 19 days, no weapon has been recovered from him and State Counsel could not produce any incriminating material against him 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 22.07.2021 and charges stands framed on 07.06.2022, out of 50 prosecution witnesses, 29 PWs have 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 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 under Section 439 Cr.P.C. 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

16.10.2024
anuradha

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