



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209 CRM-M-52931-2024
DATE OF DECISION: 29.10.2024

PRAB SIMRAN SINGH ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Balram Singh, 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 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.21 dated 29.01.2024 (Annexure P-1) under sections 302/304 IPC and Section 27 Arms Act registered at Police Station Dasuya, District Hoshiarpur.

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

‘Statement of Raj Singh son of Karam Chand resident of Odra Police Station Dasuya District Hoshiarpur aged about 58 years Mo: 94176-01787 stated that I am a resident of the said address and retired from the Army and currently working at Rail Coach Factory Kapurthala. My nephew Gurpreet Singh, son of Joginder Singh, a resident of Odra, aged about 19 years, was working as a mechanic at Bajaj Motorcycle Agency Dasuya for the last three years. Who used to come home on foot. Today the time will around 5:30 p.m. that I was going from Dasuya city to Odra village on my scooter, so I took my nephew Gurpreet Singh to the village, where my nephew was changing his clothes. Owner Prab



simran Singh son of Apinder Sing Resident of Ward No. 07 GT. Rond Dasuya Police Station Dasuya started to tell him that there is still work for motorcycles, after his work, you can go told to my nephew, Prab simran Singh to fight with him and in the meantime the quarrel between the two increased so his owner Pra simran Singh came in a frenzy and took out his license pistol from his pocket and pointed it at my nephew Gurpreet Singh and while I was watching, he fired a shot which hit my nephew on the left side of his chest and my nephew Gurpreet Singh fell down. I shouted Mar Dita Mar, then the said accused ran away from the spot with his pistol. I arranged a ride and took my nephew to Civil Hospital Dasuya where the doctor declared my nephew Gurpreet Singh dead. The grudge is that my nephew Gurpreet Singh wanted to go home with me, but Prab simran Singh wanted to do more forced labor on that side, that's why he shot my nephew. I wrote a statement to you, heard it, OK, action should be taken SD/- Raj Singh'

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 FIR, the allegations against the petitioner are that he had fired shot on the deceased-Gurpreet Singh whereas the petitioner himself brought the deceased in the hospital as is evident from the medical record. He submits that the complainant has turned hostile as per the certified copy of deposition of PW-2-Raj Singh, produced in the Court today. He has further argued that the antecedents of the petitioner are clean 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 17 Prosecution Witnesses, only 3 PWs have been examined so far.

**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 8 months and 24 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that serious allegations are levelled upon the petitioner but is not in a position to controvert the submissions made by counsel for the petitioner. He very fairly informs the Court that Section 302 IPC was deleted and Section 304 IPC was added later on in the instant FIR considering the case to be an accident vide DDR No. 17.04.2024.

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. 8 months and 24 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, the complainant has turned hostile, 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 26.04.2024 charges stands framed on 25.07.2024 out of 17 prosecution witnesses, only 3 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 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

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

29.10.2024
anuradha

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