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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-47664-2024
Date of Decision: 27.09.2024**

SWARJOT SINGH @ SHERRY**....Petitioner**

VERSUS

STATE OF U.T. CHANDIGARH**....Respondent****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sanjay Verma, Advocate
for the petitioner.

Mr. Manish Bansal, Public Prosecutor, U.T., Chandigarh with
Mr. Shaurya Nagpal, Advocate for U.T., Chandigarh.

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

The jurisdiction of this Court under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita, 2023, has been invoked seeking the concession of
grant of regular bail for the petitioner in FIR No.55 dated 17.04.2024, under
Sections 399, 402 of the Indian Penal Code, 1860, registered at Police Station
Sector 11, Chandigarh.

2. The prosecution story set up in the present case as per the version
narrated in the instant FIR reads as under:-

*'It is submitted that I SI along with ASI Rahul Bhardwaj,
HC Sanjay 1007/CP, HC Satish 911/CP, HC Harbhajan Singh
233/CP, HC Harjagdeep Singh 1930/CP, Senior Constable
Samundar 1441/CP, C. Sachin 4095/CP and C. Naveen 5263/CP*



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were on patrol duty in two private vehicles in search of crime while keeping the situation of Lok Sabha Elections in view, we were present near light point of Sector 24/25 at about 01.50 P.M., in the meantime, an informant all of sudden came before me and told me that some boys whose names are Sajid @ Chhota, Ramiji, Rajan, Partik @ Chhedi, Swarjot Singh @ Sherry and Jitender Singh @ Gegan who have already committed the offences of theft and dacoity in nearby area; today these boys are having one Mahindra Pickup the number of which is HR 68B 8444 and they are going from Hallomajra towards different sectors and they have also committed racki in Sector 22 as well as Sector 24 to commit the offence of theft and dacoity. Those boys are presently sitting in the jungle area of Sector 25 rally ground after parking their vehicle over there and are planning to commit the offences of dacoity in the Chandigarh City and in case immediate raid is conducted then all of them (6 persons) can be apprehended while planning for committing dacoity with deadly weapons/sharp edged weapons and iron rods, danda etc. That while believing the information of the informer, we colleagues discuss the issue and also tried to join the persons going from there in the investigation of this case but every person went away while disclosing their personal difficulty without disclosing their names and addresses. That I SI along with colleagues reached near rally ground through Private vehicles, where I SI while keeping the situation in view, directed/instructed HC Harbhajan Singh 233/CP who was already in Civil uniform to reach at the place where six persons are planning to commit dacoity and while concealing his identity, he must hear the conversation of those boys. After instructing him, at about 02.30 P.M., HC Harbhajan Singh was forwarded towards the spot and at about 02.50 P.M. HC Harbhajan Singh came back and he disclosed me/SI that the information received by us is true. He disclosed that six persons are sitting in jungle area near rally ground and they are planning to commit dacoity



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in the area of Chandigarh. He told that out of those six persons, one has worn T- shirt of black colour and he is making understand the remaining persons about how to commit dacoity. The secret informer was made free. Then, I SI after constituting raiding party surrounded the spot and all the persons after saying the police party tried to move here and there but they were apprehended by me along with the help of colleagues. The person who was apprehended by HC Harbhajan Singh, upon asking by me, disclosed his name as Mohd. Sajid @ Chhota son of Mohd. Sahil resident of Jhugi No. 1047, Janta Colony, Sector 25, Chandigarh, aged 36 years, he got recovered a sword, he having in right hand. The person apprehended by HC Sanjay, upon asking by me disclosed his name and address as Partik Goad @ Chhedi Lal son of Omparkash resident of 3930, Sector 25-D, Chandigarh aged about 21 years and he got recovered a sharp edge weapon i.e. Daatar, he was having in his right hand. The person apprehended by HC Satish Kumar disclosed his name and address upon asking by me as Rajan Choudary son of Late Hira Choudary resident of Ishapur Road, Derabassi, Punjab, age 40 years and he got recovered an iron sabbal he was having in his hand. The person apprehended by Constable Naveen upon asking by me disclosed his name and address as Ramaiji Parshad son of Late Sohda Parshad resident of Jhuggi, Mamta Enclave, Zirakpur, Punjab, aged 32 years and he got recovered one stainless steel rod, he was having in his right hand. The person apprehended by Senior Constable Samundar upon asking by me disclosed his name and address as Jitender Singh @ Gegan son of Late Taranjit Singh resident of village Togapur, Tehsil Derabassi, District SAS Nagar, Punjab, aged 29 years and he got recovered a long screw driver, he was having in his right hand. The person apprehended by Constable Sachin upon asking by me disclosed his name and address as Sawarjot Singh @ Sherry son of Gurbhej Singh, resident of Village Gulabgarh, Tehsil



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Derabassi, District SAS Nagar, Punjab, aged 24 years and he got recovered one wooden stick, he was having in his right hand and one pithu bag of black colour; upon checking the said bag one cutter make metabo W7-115, Chennai of iron and one axe blade was found in the same. The sketch of all the weapons i.e. sword, Daatar rod, screw driver, sabbal, danda/stick recovered from above accused was prepared separately and their parcels were made separately and the same were sealed with the seal of RD. Sample seal was prepared separately and the same was handed over to HC Harbhajan Singh after its use. All the above six parcels duly sealed with the seal along with sample seal and also the pithu bag, cutter, iron chenny, axe blade were also taken into police possession vide recovery memo; the memos were signed by witnesses. The vehicle i.e. Mahindra pickup bearing No. HR 68B 8444 which was standing near the place of occurrence was also taken into police possession and the memos was signed by the witnesses. That Mohd. Sajid @ Chhota, Partik Goad @ Cheddi Lal, Rajan Choudary, Ramaiji Parshad, Jitender Singh @ Gegan and Swarjot Singh @ Sherry while keeping the above weapons i.e. sword, rod, Daatar, Screw driver, sabbal, danda and while planning to commit dacoity have committed the offence punishable under Sections 399, 402 IPC, therefore, the present Tehrir is being sent to Police Station for registration of case F.I.R. through HC Harjagdeep Singh 1930/CP against Mohd. Sajid @ Chhota son of Mohd. Sahil resident of Jhugi No. 1047, Janta Colony, Sector 25, Chandigarh, aged 36 years; Partik Goad @ Chheddi Lal son of Omparkash resident of 3930, Sector 25-D, Chandigarh aged about 21 years; Rajan Choudary son of Late Hira Choudary resident of Ishapur Road, Derabassi, Punjab, age 40 years; Ramaiji Parshad son of Late Sohda Parshad resident of Jhuggi, Mamta Enclave, Zirakpur, Punjab, aged 32 years; Jitender Singh @ Gegan son of Late Taranjit Singh R/o village Togapur, Tehsil Derabassi, District SAS Nagar, Punjab, aged 29



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years; Sawarjot Singh @ Sherry son of Gurbhej Singh, resident of Village Gulabgarh, Tehsil Derabassi, District SAS Nagar, Punjab, aged 24 years. The number of case FIR be intimated after its registration. I SI along with colleague, am busy in the investigation of the case.

3. **Contentions**

On behalf of the petitioner

The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case on the allegation of planning to commit Dacoity which is factually wrong as the petitioner is neither the member of any group nor has committed any offence as alleged. He contends that the petitioner was picked up from red light of Sector 25, Chandigarh by the police and later on has been implicated in the instant FIR. He further contends that the petitioner has been in custody since 17.04.2024. Learned counsel for the petitioner submits that co-accused namely Ramaji Parshad and Jatender Singh alias Gagan have already been granted the concession of regular bail by this Court vide orders dated 28.08.2024 passed in CRM-M-40537-2024 (Annexure P-2) and 19.09.2024 passed in CRM-M-29409-2024 (Annexure P-3).

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, the same is taken on record. According to aforementioned custody certificate, the petitioner is behind bars for almost 05 month 11 days.



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Learned State Counsel on instructions from the Investigating Officer seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in other cases and does not deserve the concession of grant of regular bail.

4. **Analysis**

Be that as it may, considering the custody period i.e. 05 months and 03 days for which the petitioner has suffered incarceration, investigation is complete and challan stands presented to Court on 14.06.2024, wherein charges are yet to be framed and the total 18 prosecution witnesses are yet to be examined, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind bars for an indefinite period.

For the same, 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 as 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.

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



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in all probability would land the petitioner in a situation of denial of concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of the BNSS 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 herein-above shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

27.09.2024
adhikari

Whether reasoned/speaking: *Yes/No*
Whether reportable: *Yes/No*