



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

219

CRM-M-48242-2024

DATE OF DECISION: 01.10.2024

HARJINDER SINGH ALIAS JIND ALIAS HARWINDER SINGH
...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Dadwal, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.46, dated 25.02.2024 (Annexure P-1), under Sections 395, 384 and 120-B IPC (Section 411 IPC added later on) challan has presented under Sections 395, 384, 120-B, 473 IPC, registered at Police Station Sahnewal, District Police Commissionerate Ludhiana.

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

‘Statement of Amarjit Yadav son of Ram Nath Yadav, resident of Village Parsa @ Sirsiya, police station Tamkhui Road, District Khushi Nagar, UP at present resident of Street No. 6/7, New Satguru Nagar, Lohara, police station Sahnewal, Ludhiana age approximately 43 years, mobile no. 98726-49186 that I am the resident of the above said address and works as a Manager in Bhavya Enterprises Factory, Kanganwal Road,



Jaspal Banger: The accounts pertaining to the cash of the company and with regard to the workers is retained with me. On dated 24.02.2024, advance was given to the workers and the remaining amount out of that was taken at home by me and on dated 24.02.2024 at time approximately 9:30 PM, I was present at my home then 7/8 unknown persons having muffled faces came from outside, who were holding iron rods and dattar in their hands. Three persons out of them, held me and two persons caught hold my son and made him stand with wall on one side and the other persons by breaking lock of my Almirah, took out the cash lying in that, gold and mobile phone make INFINIX NOT-II containing SIM No. 8264734186 and fled away from the spot. I kept on to search them my own level till now. Now I have come to know that the persons who snatched my money are Vijay @ Kala son of Ram Lal, Mohalla New Satguru Nagar, Ludhiana, Harjinder Singh Sukhvir Singh @ Fauji son of Gurcharan Singh, resident of Near Malli Chowk Ludhiana, Tat son of Sarwan Singh resident of Near Bhutni Dealer, Garib Nagri, Jaspal Banger, Ludhiana, Deepak son of Sarwan Singh resident of Near Bhutni Dealer, Garib Nagri, Jaspal Banger, Ludhiana, Abhishek @ Chirkut, Deepak Gupta son of Amrik Gupta resident of Near Mahadev Mandir, Mahadev Nagar, Ludhiana and fled away by snatching the mobile. I will inform you later on, after checking about the money and gold as how much that was. Today, I alongwith Gurdeep Singh son of S. Mehar Singh resident of Model Town Extension Kothi No. 3727/23, Ludhiana were coming to inform you, you have met, statement has been got recorded, heard, it is correct. Appropriate legal action may be taken against the above said persons. Sd/- Amarjeet Yadav.”

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 the



petitioner has not committed any such offence as mentioned in the above noted FIR. He submits that the petitioner is in custody since 29.02.2024 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 13 Prosecution Witnesses, none has been examined so far. He further submits that co-accused namely Rajveer Singh alias Tuti alias Rajdeep Singh, Sukhbir Singh and Prince alias Prince Kumar have been granted concession of regular bail vide orders dated 09.09.2024, 27.05.2024 and 29.08.2024 passed in CRM-M-43364-2024, CRM-25953-2024 and CRM-M-40817-2024 respectively.

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 6 months and 27 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular on the ground that the petitioner is involved many other cases bail 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 24.04.2024 and charges are yet to be framed.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 6 months and 27 days similarly situated co-accused have already been granted concession of bail by this Court, 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 24.04.2024 and charges are yet to be framed, out of 13 prosecution witnesses, none has 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 Nikeshtara 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.

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 the concession of bail.

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 case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

01.10.2024
anuradha

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