



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214 CRM-M-48461-2024
DATE OF DECISION: 16.10.2024

SAHIB SINGH ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vikramjeet Singh, Advocate for
Mr. S.S. Gopera, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.
Mr. Shakti Mehta, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 of BNSS for grant of regular bail to the petitioner in FIR No. 25 dated 28.02.2020 registered under Sections 406, 420, 465, 467, 468, 471, 120-B IPC at P.S. Sadar Samana, District Patiala.

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

‘An application no.7541/Peshi dated 21.09.2019 and an application no.4626/OP dated 21.11.2019 have been received through post on behalf of Davinder Singh son of Gurdev Singh resident of Chakk Bhaike Tehsil Budhlada District Mansa now residing at Bhakhra Enclave Patiala mobile number 62831- 22546 through Hon'ble SSP Sahib Patiala for registration of FIR under section 406, 420, 465, 467, 468, 471, 120-B, IPC against Sahib Singh, Nirmal Singh sons of Tarsem Singh. residents of village Shadipur Dera P.S. Guhla (Haryana), Gurwinder Singh son of



Kulwant Singh resident of Kulara, Kuldeep Singh, Punjab Singh sons of Gulzar Singh residents of village Asmanpur P.S. Sadar Samana, contents of which are as under: "To, Hon'ble SSP Sahib district Patiala. Subject: regarding initiation of proceedings against Sahib Singh, Nirmal Singh sons of Tarsem Singh residents of village Shadipur Dera P.S. Guhla (Haryana), Gurwinder Singh son of Kulwant Singh resident of Kulara, Kuldeep Singh, Punjab Singh sons of Gulzar Singh residents of village Asmanpur for committing fraud. Sir, it is requested that I Davinder Singh son of Gurdev Singh resident of village Chakk Bhaike Tehsil Budhlada District Mansa now residing at Bhakhra Enclave Patiala and I am resident of aforesaid address and I am army personnel by profession. Our entire family is living as joint family and our land is being looked after by my Uncle Subeg Singh son of Shisha Singh resident of Chakk Bhaike. On dated 06.07.2018, we entered into agreement to sell of land measuring 23 Kanal 11 Marlas situated at village Asmanpur with Kabal Singh son of Tarsem Singh resident of Shadipur at the rate of Rs.17, 10,000/- per acre and at the time of execution of agreement to sell one cheque bearing No.067361 of Rs.12 Lacs drawn in OBC Bank at Branch Budhlada was given and the date for executing a sale deed was fixed for 20.01.2019 and this agreement was executed by Gurwinder Singh and Punjab Singh, Kuldeep Singh above but on dated 28.11.2018 Sahib Singh said that I am in urgent need of money for domestic use then I gave him one more cheque bearing No.000007 of HDFC Bank Samana of Rs.4 lacs and Rs. 9 Lacs was given Cash but above person did not executed a sale deed in our favour and said that if you give me Rs.18 Lacs more then I will clear the outstanding of bank and will execute a sale deed on dated 30.02.2019. When we made a talk regarding this with dealer Gurwinder Singh, Punjab Singh and Kuldeep Singh then they said that you will give Rs.18 Lacs to Sahib Singh then we will execute sale deed in your favour on which on the asking of these dealers I paid Rs.18 Lacs more to Sahib Singh. At the time of executing agreement to sell Sahib Singh above Impersonating Nirmal Singh



at the place of Kabal Singh. At the time of executing a sale deed Sahib Singh said that my brother is not ready to execute sale deed thus, you can execute one new agreement to sell with me and extend the date for executing sale deed and thereafter, he will make his brother ready. On the behest of Gurwinder Singh, Punjab Singh and Kuldeep Singh, I executed one new agreement to sell for extending the date and Sahib Singh executed one affidavit of Rs. 43 Lacs as a Security and executed one pronote. According to which he will be bound to execute a sale deed on dated. 10.06.2019 by vacating the stay on the land or in case he will not do this then he will be return the amount in double. (Copy of which is attached herewith) But above persons neither executed sale deed in our favour nor returned our money till date. Whenever, we demanded our money back then they issued threats of life me and my family and threats to face dire consequences. I am working in army due to which I am living here alone due to which I and my family has always threat of life and wealth from these persons because they can cause any loss to me and my family at any time. From which it becomes crystal clear that the above accused in connivance with each other and under a well planned scheme by keeping us in dark committed fraud of Rs.43 Lacs with us. Thus, case of cheating may kindly be registered against all of above under appropriate sections and protection to me and my family's life may kindly be making sure and my amount of Rs. 43 Lacs may kindly be returned to me. I shall be thankful to you. Yours faithfully SD/- Davinder Singh son of Gurdev Singh resident of village Chakk Bhaike Tehsil Budhlada District Mansa now residing at Bhakhra Enclave Patiala 62831-22546.'

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 dispute involved in the present case revolves around the execution of the



agreement to sell dated 06.07.2018 of land measuring 23 Kanal 11 Marlas situated at village Asmanpur with Kabal Singh. He submits that the petitioner has been in custody for 10 months and 16 days 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 15 Prosecution Witnesses, only 2 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 10 months and 16 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail asserting that the petitioner is a habitual offender as he is involved in two more FIRs also, therefore prays for dismissal of the present petition.

On behalf of the complainant

Learned counsel for the complainant vehemently opposes the prayer for grant of bail while referring to the order dated 30.10.2020 whereby on the basis of undertaking that he is ready to get the sale deed executed was granted concession of bail, subsequently, he did not adhere to the said undertaking and his bail was cancelled vide order dated 17.05.2024. He points out that the petitioner approached the Apex Court for concession of bail by filing SLP which was got dismissed vide order dated 25.07.2024.



4. Analysis

From the above case it can be culled out that today the circumstances are that charges stands framed on 17.02.2024 and keeping in view the nature of allegations which revolves around the execution of agreement to sell and the custody part by now extended to 10 months and 16 days and out of 15 PWs, only 2 PWs have been examined so far and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt. The above facts are 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.

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 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

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