



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218

CRM-M-47991-2024
DATE OF DECISION: 30.09.2024

AJAY ALIAS KALLU
Versus

...PETITIONER

STATE OF U.T. CHD

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Suresh Kumar Dhiman, Advocate for the petitioner(s).
Mr. Manish Bansal, PP, UT Chandigarh with
Mr. Shaurya Nagpal, Advocate with
SI Gurchetan Singh, Advocate the respondent.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

Prayer is for grant of regular bail under Section 439 Cr.P.C. in FIR No.205 dated 05.12.2023 registered under Sections 147, 148, 149, 325, 323, 341, 302 and 506 of IPC, 1860 and Sections 25, 54 and 59 of the Arms Act (Challan presented under Sections 302, 341, 147, 148, 149, 120-B IPC) at Police Station Sector 11 of UT, Chandigarh.

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

“Statement of Ajay S/o Rampal R/o H.No. Jhuggi No. 1882, Sector-25, Chd Age-21 Yr. Stated that I am resident of above mentioned address and is doing private job and on last night dated 3/4/12/2023 morning at around 1:30 AM on my motorcycle bearing No. CH01BV498 Make Seplendor color silver was going towards my jhuggi Sec-25, Chandigarh on wrong side through university, then at sudden one black coloured vehicle after hitting me fallen me down, at behind of black coloured car, there was also one silver coloured car, which stopped behind that car, from both the cars some boys came out, all were holding wooden



rods and iron garari (which falls in front of rod). Among these boys Dharmender of Naya Gaon, Ajay Kalu Sec-25 Chd and Spoty of Dhanas, Sabu of Sec-25 Chd and other boys were along with them. whom I can identify on coming in front of me. Dharminder on my standing hit me with the wooden rod that he was holding on my left leg and Ajay @ Kalu hit me with rod on my right leg and after getting injury I got fallen down and Sabu hit me with rod on my right arm and spoty hit again and again on my left arm and the boys came along with them hit me with rods and iron garari and hit me with legs/fist blow, due to which I sustained serious injuries on my both legs and arms and I raised hue and cry, despite that they kept on beating me, while going Ajay @ Kalu and his other fellows gave me threat to eliminate me and left the spot on their respective vehicles. Dharminder, Spoty, Ajay @ Kalu, Sabu and his other friends along with other friends gave me injuries by giving me beating with wooden rod, rods and iron garari, strict legal action be taken against them, among them one boy was also carrying pistol with him, whom I can identify on coming present before me.”

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 merely on the statement of Deepak-brother of the deceased wherein nothing has been recovered from the petitioner. He submits that similarly situated co-accused namely Sandeep Kumar and Rohit @ Gugad have already been granted concession of regular bail vide orders dated 30.04.2024 and 22.08.2024 passed in CRM-M-20481-2024 and CRM-M-37595-2024 respectively. He further submits that the petitioner has been in custody since 05.12.2023 and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time.

**On behalf of the State**

On the other hand, learned Counsel for UT Chandigarh appearing on advance notice, accepts notice on behalf of respondent and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 9 months and 20 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that he is involved in two more FIRs but is not in a position to controvert the submissions made by counsel for the petitioner.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 9 months and 20 days, similarly situated co-accused has 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. 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, he is on bail in those FIRs and 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

30.09.2024
anuradha

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