



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-51890-2024
DATE OF DECISION: 24.10.2024

GURNAM SINGH

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vaibhav Sharma, Advocate for the petitioner(s).

Mr. S.S. Pannu, Addl. A.G, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., for grant of regular bail in FIR No. 378 dated 17.10.2021 under sections 302, 342, 201 and 120-B of IPC registered at Police Station Sadar, Safidon, District Jind, Haryana.

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

'Stated that I am resident of the above address and I am a housewife, I have three children, 2 girls and one boy. Yesterday on 16.10.2021 at around 4 o'clock, my son Prince Pal went from home while saying that he is going to his uncle's son's birthday party. After that I called my son at 09.30 p.m and asked why did he has not come home yet, he said that I have left and will reach home within 10 minutes. After that I kept calling, he did not pick up the phone and later the phone was switched off. After this time, around 12.30/01.00 at night, Akash son of Bhag Singh caste Jat Sikh resident Dera Panchayat Gujrakhiya came to the my house and told me that both he and the Prince Pal had gone to Rampura



village, Prince Pal had gone inside the house of Gursaran Kaur (Prince Pal's friend) daughter of Pindar Singh resident of Rampura after chatting with her friend on the phone and he was waiting for him outside the house. After a while, he started hearing voices from inside the house and heard screaming, so he come here with Prince Pal's motorcycle, to save him, after that I told about this to my husband, brother-in-law (Devar), brother-in-law (Jeth) and other family members. When 4-5 members of my family went to the house of Rampura Sarpanch to find out, they did not give any reasonable answer to the members of the family, then we came to know about lying of my son's body near Asandh Road near Dera Sacha Sauda, near the Area village Rohad lying on the side of the road. We then went there and saw the body of my son which was injured and lying on the side of the road. Then we have verified ourselves, that Gursaran Kaur daughter of Pindar Singh, Pindar son of Gurnam, Gurfateh Singh son of Gurnam Singh, Gurnam Singh son of Satnam Singh resident of Rampura and their relative Jaswinder Singh alias Jas son of Jagdish resident of Chowgama in connivance with their daughter Gursaran Kaur who has called Prince Pal at their house and they all have killed Prince Pal by giving him injuries and they have put his dead body in car bearing no. HR 26 DP 0035 owned by Jaswinder Singh alias Jas and thrown his dead body at the road side near Gurudwara Sacha Sauda area of village Rohad. All of these above have brutally beaten my son and killed him, strict legal action should be taken against all of them. I have given my statement to you, I have heard and understood the same. RTI Baljeet Kaur ATTESTED KRISHAN KUMAR SI/SO Ps Sdr Safidon. Dt. 17.10.21'

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 even as per the plain reading of the FIR, no specific role has been attributed to the



petitioner who was 75 years of age at the time of alleged commissioning of the offence that took place on 17.10.2021. He further submits that the petitioner was roped in the instant case only with the motive to drag each and every family member, despite the fact that even after the investigation and in the challan no incriminating material could be referred by the prosecution against the petitioner. 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.

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 2 years, 10 months and 23 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner has played active part in conspiracy and was present at the time of occurrence 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 who was 75 years of age at the time of alleged commissioning of the offence has already suffered sufficient period in custody i.e. 2 years, 10 months and 23 days, antecedents of the petitioner are clean, 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 after framing of charges on 05.08.2022, out of 29 prosecution witnesses, only 16 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 under Section 439



Cr.P.C. on his/her 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

24.10.2024
anuradha

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