

2024:PHHC:139634



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48919-2024
DECIDED ON: 24.10.2024

JASPAL SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kamal Deep Sehra, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023, has been invoked for the grant of regular bail to the petitioner in FIR No. 87, dated 22.10.2023, under Sections 323, 341, 506, 148, 149 of IPC, 1860, offences later on added and converted into Sections 307, 323, 341, 506, 34 of IPC, 1860 registered at Police Station Kiratpur Sahib, District Rupnagar.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of statement. "Statement of Tilak Raj S/O Amardev Singh, resident of village China, Police Station Kiratpur Sahib, District Rupnagar, aged about 22 years, stated that I am resident of the above

mentioned address and working as truck driver. On dated 19.10.2023 at about 13.30 PM, I was coming back to my home after giving shagun on the occasion of marriage in the house of Phuman Singh, a resident of my village. When I was at about 100 meters away from my house, then about 7-8 boys of my village surrounded me and started beating me among whom Jassi S/O Madan hit on my head and back with khanda and Parminder S/O Jinder attacked on my back and legs with kirch, whom I had recognised and their 5-6 companions injured my body with sticks and torn my clothes. They got me nude and left in the injured condition. The villagers after listening my hue and cry got me admitted to Civil Hospital Sri Anandapur Sahib. After being given first aid there, I was referred to PGI Chandigarh, where I am under treatment, legal action may be taken. Reason for the grudge is that there was a argument between me and Jassi and Parminder during studying time in the school due to which we did not have speaking term. Statement has been recorded, read over and heard, admitted to be correct. Sd/- Tilak Raj Singh, verified Sd/- Amardev Singh (Father), Attested: Sd/-Pradeep Sharma, ASI PS Kiratpur Sahib Dt.22/10/2023. POLICE ACTION: On dated 20.10.2023, a telephonic call was received from the PGI Chandigarh that injured Tilak Raj S/o Amardev Singh, resident of China, PS: Kiratpur Sahib was admitted for treatment of the injuries sustained due to fight vide Regd. CR No.4925128. But statement of the injured could not be recorded because I, ASI Pradeep Sharma was engaged in government duty 21.10.2023. So, today I, ASI Pradeep Sharam alongwith Ct. Simranjit Singh No.7621 R, PHG Kasturi Lal, after reaching at the PGI Chandigarh, obtained CR Chit of the injured from Police Post, an application written to the SMO for recording of statement, after declaring the injured Fit for statement by him, I reached to the injured Tilak Raj's bed and recorded his above statement, which has been read over to him, who after being read and heard word-by-word, admitted to be correct, put his signature in English. His statement has been verified by his father Amardev Singh. I, ASI have attested the statement. From the aforesaid statement, offence u/s 307, 323, 341, 506, 34, 148, 149

IPC has been found to be made out against Jassi S/O Madan and Parminder S/O Jinder resident of China and 5-6 other unknown persons. The statement is being sent to the police station through PHG Kasturi Lal for registration of FIR for the above mentioned offences against the above mentioned Jassi etc. After getting the FIR registered, its file number be informed. Senior officers may be informed through Control Room. I, ASI alongwith colleagues am leaving for the spot. Sd/-Pradeep Sharma ASI PS Kiratpur Sahib Dated: 22/10/2023. Today within the limit of PGI Chandigarh AT: 02.50 PM. On receipt of the statement, above said case has been registered for the above mentioned offence against Jassi S/O Madan and Parminder S/O Jinder, resident of Chikna and 5-6 other unknown persons and action got completed. Copies of FIR are being sent to the Illaqua Magistrate and the officers through dak. Circle Officer, Sri Anandpur Sahib and Incharge Control Room Rupnagar is being informed separately through wireless message. Case file alongwith original statement has been sent to the ASI Pradeep Sharma 230/R on the spot through PHG Kasturi Lal. Head Munish, Police Station has been directed to maintain the record. Bandi Rapat No.23 dated 22.10.2023 entered in Roznamcha of Police Station Kiratpur Sahib.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the statement of injured namely Tilak Raj. He further submits that it is surprising that the said villagers who were got attracted by hue and cry of PW-1 did not witness the alleged offenders fleeing from the spot. Besides the prosecution failed to provide any eye witnesses to the incident, which raised doubt in the story of the prosecution.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the

ground that there are allegation of causing hurt using weapons, but he could not refer to any incriminating material against the present petitioner.

4. **Analysis**

Be that as it may, considering the fact that, the petitioner has already suffered incarceration of 11 months and 14 days, wherein no incriminating material is available with the State counsel to connect the petitioner with the alleged offence, as there are contradictions on the statement of PW-1 added with the fact that investigation is complete, challan stands presented on 18.12.2023, charges stands framed on 30.01.2024 and out of total 19 prosecution witnesses 10 have been examined so far, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 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 discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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 hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

24.10.2024

Meenu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No