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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49620 of 2024

Date of decision: 15.10.2024

Sukhwinder Singh @ Vicky

.....Petitioner

Versus

State of UT, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gurbir Singh Dhillon, Advocate for the petitioner.

Mr. Viranjeet Singh Mahal, Addl.PP, UT, Chandigarh.
(through V.C)SANDEEP MOUDGIL, J (ORAL)**Relief Sought**

1. The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked seeking the concession of regular bail for the petitioner in FIR No.103 dated 08.07.2024, under Sections 191(2), 191(3), 190, 109 BNS and 25/27/54/59 of the Arms Act registered at Police Station South Sector 34, Chandigarh.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ Statement of Ankur Panwar son of Rajinder Singh resident of House No. 3211/1, Sector 44-D, Chandigarh aged about 28 years gave a statement that he is resident of above mentioned address and my permanent address is house no. 61/7, Gali No.4, Mohan Puri, Maujpur, Delhi and was presently working



as Assistant Manager in Share

Market at Motilal Oswal, SCO No. 44-45, Sector 9, Chandigarh. Today, at around 12:15/12:30 AM I along with my friends Khushwinder Singh and Harjinder Singh who stays with me went to the market of Sector 44-D, Chandigarh for eating Pizza etc.

But we found the market closed due to late hours. We started walking back towards our house and we were walking behind each other, Khushwinder Singh alias Khushi was walking in front of me and Harinder Singh was walking in front of me at some distance and were coming back while talking on our mobile phones with some persons, when we reached on the turn of House No. 3234, then suddenly from behind from the side of Divya Public School, two cars and a motorcycle came, and the persons who were sitting in these vehicles stopped the vehicles in front of me and many persons alighted from the cars and they were holding sticks and rod and swords and other sharp edged weapons in their hands and started walking towards me while abusing me and were saying to each other to kill me, by saying this they attacked me with sticks, swords and other sharp edged weapons and I stride to stop their blows with my hands and I fell on the ground and started shouting for help then my friend Harinder Singh started throwing stones at them and after hearing noise people started gathering on the spot then the assailants fled away in both the cars out of which one white colour swift car bearing and I do not know the colour of the other car, they ran away by reversing their vehicles and while abusing me. As blood was oozing from my head due to injuries caused by them, because of this reason I could not record the numbers of the vehicles. That I got to know later that the assailants in the white swift car and the other car and the white motorcycle whose number I noted as CH01AM3697, that while fleeing from the spot they have also fired gun shots in the air. My friends Khushwinder Singh alias Khushi and Harinder Singh and my neighbour Gagandeep Singh took me to the hospital, GMCH Sector 32, for treatment and after taking treatment I came back to my home. That the assailants come in white swift car and other car and



motorcycle no. CH01AM3697

with an intention to kill me attacked me with sticks, swords and other sharp edged weapons and caused injuries on my head and on other places. Strict legal action be taken against them.”

Contentions

On behalf of the petitioner

3. The Ld. counsel for the petitioner contends that the main accused, who fired gun shot has been granted the concession of regular bail by the learned trial Court vide order dated 21.08.2024 (Annexure P-4). In addition to the aforesaid fact, the co-accused who has been granted bail was also involved in another FIR No.104 dated 08.07.2024 whereas the petitioner was nominated as accused in instant FIR with the identical allegations. He further submits that the parties have already entered into a compromise vide compromise deed dated 07.08.2024 (Annexure P-7) and the factum of entering into compromise has not been denied by the learned counsel for the complainant.

On behalf of the State

4. The Ld. State Counsel while appearing on advance notice through video conference, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to the same, the petitioner is behind bars for almost 03 months and 06 days. Learned State Counsel on instructions from the Investigating Officer submits that another matter arising out of the same FIR qua co-accused is listed before this Court for 22.10.2024 and seeks listing of the present petition along with the same. However, on merits he seeks dismissal of the instant petition stating that though a gun shot was fired but could not ascertain any injury that has been caused.

Analysis

5. As a matter of fact, from the perusal of record, it is evident that it is a case of non-injury. If at all the gun shot was fired by the co-accused, he has



already been granted the concession of regular bail by the trial Court. The petitioner has already suffered sufficient period in custody i.e. 03 months and 06 days and perusal of the custody certificate depicts that he is not involved in any other case, meaning thereby he is not a habitual offender and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt and the parties have also compromised the matter, which enhanced the probability of earning acquittal before the trial Court and is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind 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 ReInhuman 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 as enshrined under Article 21 of the Constitution of India.



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 the 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.

Decision:

6. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 483 of BNSS, 2023 on his 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

15.10.2024
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No