



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

231 CRR-1937-2024
DATE OF DECISION: 23.10.2024

MANTOSH PASWAN ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Datta , Advocate and
Mr. Vaibhav Bhargav, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition under Section 442 of BNSS, 2023 read with Section 483 of BNSS has been filed challenging the order dated 19.03.2024 passed by Additional Sessions Judge, SBS Nagar dismissing the appeal of the petitioner for granting bail to him as well as the impugned order dated 14.11.2023 passed by Principal Magistrate, Juvenile Justice Board, SBS Nagar dismissing the bail application filed by the petitioner.

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

‘12. FIR Contents: "Statement of Rajat Kumar S/o Harmesh Lal R/o Kalra Mohala Garhshankar Road, Nawanshahr, Police station City Nawanshahr, District SBS Nagar aged about 22 years Mobile no. 95927-54572 stated that I am resident of above mentioned address, I run kariyana shop in my mohala, my father passed away about 5 years ago, my mother



Surinder Kaur is house wife, one of my sister Kajal W/o Ajay R/o Gopal Nagar Jalandhar is married there, my younger brother Vishal @Galu aged about 17-18 years, today I was present at my kriyana store then my younger brother Vishal @ Galu went from home along with his one of his friend Pritam R/o Guru Teg Bahadur Nagar and one another friend at about 3-4 in afternoon on bike of Pritam, that after sometime I came to know that my brother Vishal @ Galu and his friends had a fight with another group that is ccthat the above mentioned fight took place at Mohala Shiv Nagar near Kusht ashram Nawanshahr on which I reached on the spot and saw there were many girls gathered there and due to the fight stones and bricks were scattered, and I saw that the above mentioned person have injured my brother with sticks, sword etc., on seeing him I got scared, the friends of my brother took him to civil hospital Nawanshahr for his treatment and the persons who have inflicted the injuries to my brother left the spot along with their respective weapons on their motorcycle, I personally know these persons, then when I reached civil hospital Nawanshahr then I came to know that my brother Vishal @Galu have died due to the injuries caused by above mentioned persons that my brother Vishal Galu have been murdered by Parmod Paswan S/o Ram Babu, Mantosh Kumar S/o Ram Babu, Deepak S/o Ashok Kumar and Aash Mohammad @ Ashu S/o Afsar Khan all resident of Mohala Shiv Shankar near Kusht Ashram Nawanshahr, police station City Nawanshahr, District SBS Nagar, during fight. Reason of rivalry is that friend of my brother Vishal @Galu i.e. Pritam Rio Guru Teg Bahadur Nagar was having a friendship with one girl and that girl was also having friendship with Parmod Paswan due to which both of them have earlier also entered into arguments with each other and due to that rivalry today also both the parties had a fight. Dead body of my brother Vishal @ Galu is present in civil hospital Nawanshahr, I after discussing with my family was coming before you to inform you but you met me, I in presence of my Maternal uncle's son Sandeep Kumar S/o Shinderpal R/o Village Saila Khurd Police station Malpur District Hoshiarpur have recorded my statement to you

and heard it, read it over and found it correct. Strict legal action be taken against above mentioned persons. Sd/ Rajat Kumar Sd/- Sandeep Kumar Sd/- Naresh Kumari, INSP/SHO P.S. City Nawanshahr Date 30-10-2023.

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 role attributed to the petitioner qua the injury is quite vague and, if any so caused by the petitioner is by stick to the deceased-Vishal @ Galu. 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. He has referred to the order dated 03.09.2024 passed by this Court in CRM-M-41938-2024 whereby the co-accused Ashu Mohanmmad @ Ashu has already been granted concession of regular bail where the observation was noted that the fatal injury was caused on the head with gandasa to the deceased Vishal by co-accused Parmod only. He has further argued that the case of the petitioner is on same footing as of co-accused Ashu Mohanmmad @ Ashu.

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 11 months and 23 days.

Learned State Counsel on instructions from the Investigating



Officer opposes the prayer for grant of regular bail 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 is a child in conflict with law has already suffered sufficient period in custody i.e. 11 months and 23 days and 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 and the conclusion of trial is likely to take considerable time as after framing of charges on 05.08.2024, only 2 PWs have been examined out of total 18 cited PWs and out of 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 order dated 19.03.2024 passed by Additional Sessions Judge, SBS Nagar dismissing the appeal of the petitioner for granting bail to him as well as the impugned order dated 14.11.2023 passed by Principal Magistrate, Juvenile Justice Board, SBS Nagar dismissing the bail application are set aside and 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 revision petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

23.10.2024
anuradha

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