

2024:PHHC:162200



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

219 CRM-M-49299-2024
DATE OF DECISION: 04.12.2024

VINOD KUMAR ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep K. Bansal, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 B.N.S.S 2023 for grant of regular bail to the petitioner in FIR No. 236 dated 14.06.2023 under Sections 120-B, 406, 420, 467, 468, 471 of IPC and Section 201 of IPC added later on registered at Police Station Matlauda, District Panipat.

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

“Copy of complaint reproduced To the SP Panipat Subject: Defrauding of money on the pretext of giving job and upon demand of money back threatening to kill and trying to kill. Sir, It is respectfully submitted that I Ravi son of Sh. Jagbir Singh Caste Jaat resident of Village Adiyana Tehsil Matlauda District Panipat. I submit before you that 1. That the accused Vinod Kumar son of Dalip Chand M. 70821-24491 x/o H. No. 686/31, Rajiv Colony Kaithal, Bharat resident of Kaithal, Pardeep son of Nafe Singh M. No. 98124-00306 Caste Jaat resident of Devban Colony Kaithal jointly took Rs. 21,50,000/- in different installments on the pretext of giving job regarding which I have recording and video as evidence. 2. That Vindo Kumar son of Dalip Chand M.70821- 24491 resident of H. No. 686/31 Rajiv colony Kaithal and his accomplices Pardeep - Bharat to make

me believe told that Vinod is an Income Tax Officer due to which I was taken into their talks. 3. That the aforesaid accused persons issued me appointment letters of different departments and I went to the concerned office after taking those letters and the department told me that those are forged. Copy enclosed. 4. That for security of the aforesaid amount, I was issued cheques which have been dishonored and in some cheques the accused have knowingly made mistakes while filling which have not been accepted by the bank. That the accused persons called me to Chandigarh and booked green hotel for me in Sector 19 and tortured me there mentally and physically where they tried to kill me and told me not to demand money from them in future else we will kill your whole family. Due to which I could not take legal action and to pressurize me legally accused Vinod and his one accomplice took Rs. 2,00,000/- from me and after some days deposited that amount in my account but accused knowingly with my money and to defraud more money threatened me to kill and sent a legal notice to me in which he demanded money from me whereas the address of Vinod mentioned in legal notice is fake. There is no colony in whole of Karnal. That accused Vinod Kumar fake income tax officer used to tell me that all officers and ministers are under me and also says that no police officer or minister can do anything to me. Therefore I request to you that stern legal action may be taken against aforesaid accused persons. I shall be thankful to you. Dated: 8-5-2023. Complainant Ravi son of Jagbir Singh Caste Jaat r/o Village Adiyana Tehsil Matlauda District Panipat M. No. 8640000841. The complaint No. 669-Peshi dated 8-5-2023 alongwith investigation report was received in the office of SDU Panipat from Superintendent of Police Panipat by post and as per investigation report of SDU Panipat an offence u/s 406/420/467/468/471/120B IPC is made out as such an F.I.R No. 236 dated 14-6-2023 u/s 406/420/467/468/471/ 120B IPC PS Matlauda district Panipat has been registered and computerized copies of FIR were got prepared. Copy of police file alongwith complaint numbered and investigation report aforesaid for further investigation was handed to ASI Mahabir”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. He further submits that co-accused of the petitioner has already been granted the concession of regular bail vide order dated 20.04.2024 (Annexure P-2) passed in CRM-

M-14193-2024. It is contended on behalf of the petitioner that investigation is complete and nothing is to be recovered from him.

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 stating that the petitioner is a habitual offender, as he is involved in another case.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 10 months and 7 days, 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, challan stands presented on 24.03.2024, charges stands framed on 31.05.2024 out of total 17 prosecution witnesses, none has 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, 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 lend the petitioner in a situation of denial 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

04.12.2024
Meenu

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