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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49369 of 2024
Date of decision: 15.10.2024

Abhishek @ Chirkut

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Paras Jagga, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

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.46 dated 25.02.2024 under Sections 395,384,120-B IPC (Sections 473 and 411 IPC added later on) registered at Police Station Sahnewal, District Police Commissionerate Ludhiana (Annexure P-1).
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ Statement of Amarjit Yadav son of Ram Nath Yadav, resident of Village Parsa @ Sirsiya, police station Tamkhui Road, District Khusi Nagar, UP at present resident of Street No.6/7, New Satguru Nagar, Lohara, police station Sahnewal, Ludhiana age approximately 43 years, mobile no.98726-49186 that I am the resident of the abovesaid address and works as a



Manager in Bhavya Enterprises Factory, Kanganwal, Road, Jaspal Banger. The accounts pertaining to the cash of the company and with regard to the workers is retained with me. On dated 24.02.2024, advance was given to the workers and the remaining amount out of that was taken at home by me and on dated 24.02.2024 at time approximately 9.30 PM, I was present at my home then 7/8 unknown persons having muffled faces came from outside who were holding iron rods and dattar in their hands. Three persons out of them, held me and two persons caught hold my son and made him stand with wall on one side and the other persons by breaking lock of my Almirah, took out the cash lying in that, gold and mobile phone make INFINIX NOT-II containing SIM No.8264734186 and fled away from the spot. I kept on to search them my own level till now. Now I have come to know that the persons who snatched my money are Vijay @ Kala son of Ram Lal, Mohalla New Satguru Nagar, Ludhiana, Harjinder Singh, Sukhvir Singh @ Fauji son of Gurcharan Singh, resident of Near Malli Chowk Ludhiana, Tat son of Sarwan Singh resident of Near Bhutni Dealer, Garib Nagri, Jaspal Banger, Ludhiana, Deepak son of Sarwan Singh resident of Near Bhutni Dealer, Garib Nagri, Jaspal Banger, Ludhiana, Abhishek @ Chirkut, Deepak Gupta son of Amrik Gupta resident of Near Mahadev Mandir, Mahadev Nagar, Ludhiana and fled away by snatching the mobile. ”

Contentions

On behalf of the petitioner

3. The Ld. counsel for the petitioner contends that false recovery has been foisted on the petitioner. Nothing is to be recovered from him and he has been behind bars for the last 07 months and 11 days.

On behalf of the State

4. The Ld. 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 the same, the petitioner is behind bars for almost 07 months and 11 days.

Analysis

5. As far as the contention made on behalf of the complainant is concerned, on a query put by this Court, the learned counsel for the complainant could not place before this Court any concrete material in order to support of his argument. Apart from that, this Court is considerate to the fact that the petitioner is not a habitual offender as no other case has been cited by the prosecution against the present petitioner. Challan in this case was presented on 24.04.2024 and the charges were framed on 18.10.2024. No prosecution witness out of the total 13 prosecution witnesses as cited has been examined so far. The petitioner has already suffered sufficient period in custody i.e. 07 months and 11 days 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 same 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 **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.”

6. 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. 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 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:

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

8. 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