

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50531 of 2024
Date of decision: 21.10.2024

Iliyas

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

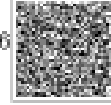
Present: Mr. Sarfraj Hussain, Advocate for the petitioner.
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

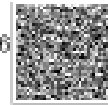
Relief Sought

1. The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 seeking the concession of grant of regular bail for the petitioner in FIR No.382 dated 24.10.2023 under Sections 148,149,323,324,326,452,506 IPC registered at P.S Ferozpur Jhirka.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

*“That the applicant is a peace loving and law-abiding citizen of the above-mentioned address whereas the accused are quarrelsome and gang forming people and do not care for the law.
2. That the accused Anees alias Suka keeps staring and staring at my brother Sahil's wife Tabbo and keeps an evil eye on her, keeps posting stories on Facebook, regarding which when we complained to Anees's father and other family members, they*



abused us and said that you are falsely defaming our son. 3. That on date 15.10.2023 at around 2:30 pm, when my father Isa went to Masjid to offer namaz, the accused, in collusion with each other, attacked my father with sticks, axes etc. in their hands and started beating him. Qayyum son of Hajar hit my father with axe on his right hand due to which my father's right hand broke, Aamir hit my father on the head with a stick, Mustaq hit my father on the head with a stick, Jaan Mohammad also hit my father on the waist with a stick, when Ilyas son of Malla and my brother Taleem tried to save my father from the accused, all the other accused also hit my brother Taleem and Ilyas son of Malla. Accused Sakru hit Taleem on the head with a stick, Anwar hit Taleem on the head with a stick. The accused Hakeem hit Ilyas on the back of his hand with a stick due to which his hand broke. On hearing the noise of the fight, I and Akhtar son of Malla reached the spot and tried to intervene between the accused and my father, brother and uncle Ilyas. The accused Siraju and Anwar slapped and punched me too. When we escaped from the accused and entered our house, even after entering the house, all the accused Anees, Hajar and Arif kicked and punched us. The accused threatened to kill us if they got another chance. 4. That after the above incident, I and Akhtar took my father Isa, brother Taleem and uncle Ilyas to the government hospital in Ferozepur Jhirka where they were medically examined and the doctor seeing their serious condition, referred them to Mandikheda where they were treated. Even after this, the said accused have still blocked our way to our house and have put stones with the intention of killing us. 5. That I gave a written application to the police station officer Ferozepur Jhirka on 16.10.2023 and on 30/10/2025 gave an application to DSP Ferozepur Jhirka and on 03.11.2023 sent an application through post to SP Nuh, but the local police did not take any action against the accused, so the present complaint has been filed in the Hon'ble Court. That the said incident has happened with the jurisdiction of the Hon'ble Court, so the Hon'ble Court has full authority to hear and decide the said complaint. 7. That the accused have committed the offence, which is a punishable offence. Therefore, it is requested to the honourable court that the present complaint be sent to the SHO of Ferozepur Jhirka under Section 156(3) Cr.P.C



and the accused be arrested. Order be given to register a case against them.”

Contentions

On behalf of the petitioner

3. The Ld. counsel for the petitioner submits that the petitioner has been falsely implicated in the instant FIR as he was the one, who intervened between the two to prevent a scuffle and in that endeavour got himself injured as has been referred in MLR dated 19.10.2023 (Annexure P-3).

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and submits that the entire story is a concocted one. After investigation, the petitioner was found to be guilty of causing head injuries with an axe and the same stands recovered from him. Challan in this case was presented on 17.09.2024. He has filed the custody certificate of the petitioner, which is taken on record. According to the same, the petitioner is behind bars for almost 02 year and 29 days and is not involved in such kind of criminal activity.

Analysis

5. Be that as it may, upon a query being put, the learned State counsel is not in a position to deny the fact that the petitioner is 71 years of age. Investigation is complete and challan stands presented on 17.09.2024. Charges are yet to be framed and 17 prosecution witnesses have been cited by the prosecution. The petitioner is behind bars for 02 year and 29 days and is not involved in any such criminal case, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind bars for an indefinite period. Further, 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***

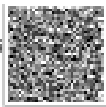
*6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in **Nikesh Tara chand Shah v. Union***



*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. 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 land the petitioner in a situation of denial of concession of bail.

Decision

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

21.10.2024
manoj

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