



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

220

CRM-M-50528-2024
DATE OF DECISION: 12.12.2024

MURTI DEVI AND ANR

...PETITIONERS

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. B.S. Rana, Sr. Advocate with
Mr. Nayandeep Rana, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

Mr. Gagandeep, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of the BNSS for grant of regular bail in FIR No. 171 dated 06.07.2023 under Sections 302, 120-B/34 IPC and Sections 25(1)(a), 27, 54/59 of Arms Act registered at P.S. Uchana, District Jind.

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

'Statement of Sandeep S/o Bheera Ram caste Jat R/o Kabarchha, Education 10th Class pass aged 35 Years Mobile No.99963-26145. It is stated that I am resident of the above mention address and doing the work of agriculture. We were two brothers. I am not having any sister. I am unmarried. My younger brother Manish Kumar S/o Bheera Ram Caste Jat R/o Kabarchha aged 32 years, was married who was having one son namely Dev aged about 2 years. My younger brother Manish Kumar was elected as Sarpanch of the village in the Year 2022 in this plan. In this election of Sarpanch, Jangeer S/o Jodha



Ram R/o Kabarchha, Uncle (Chacha) of Vinay S/o Satbir Caste Jat R/o Kabarchha was also contesting the election and he lost the election. My brother Manish Kumar won the election. After winning the election, Vinay's family was nursing animosity/enmity against us and they could not digest the winning of election of sarpanch by our family. Today i.e. on 06.07.2023 at about 08:45 AM, I and Dinesh S/o Krishan R/o Kabarchha and my brother Manish Kumar were sitting on chairs outside our house. At that time, Vinay and Balkesh sons of Satbir, and Naveep S/o Ram Partap Caste Jat R/o Kabarchha came at the spot. Balkesh and Navdeep were holding Pistols in their hands who immediately on arrival said that today we will make you surpanch. Immediately on saying this Vinay surrounded/encircled Manish from front side and Balkesh and Navdeep fired shot at Manish with the Pistols held in their respective hands. Manish started running but Balkesh and Navdeep fired shots in front and back of Manish due to which Manish fell on the ground. All 3 ran towards their house with their respective pistols. Then we brought Manish to Civil Hospital, Uchana as he had been caused Bullets Shots, where Doctor declared my brother Manish as dead. This incident has been effect in consultation with family members of Vinay namely Murti W/o Satbir, mother of Vinay and Aunt (Massi) of Vinay namely Kavita W/o Jangir and Jangir, Gurnam Sons of Jodha Ram Caste Jat R/o Kabarchha.'

3. **Contentions**

On behalf of the petitioner

Learned Senior counsel for the petitioner has argued that the petitioners have been falsely implicated in the present case and as per the allegations, the murder of Manish has been committed by co-accused persons in consultation with his family members including



petitioners, though neither the presence of the petitioners is proved nor their active role is coming forth in the alleged commissioning of the offence. He has further argued that the antecedents of the petitioner are clean, meaning thereby they are not habitual offender. He points out that the petitioner No.1 is 50 years old lady and petitioner No.2 is 49 years old and they have been assigned similar role by the prosecution.

On behalf of the State/complainant

On the other hand, learned State Counsel has filed the custody certificate of the petitioner No.1, which is taken on record. He further submits that both the petitioners were arrested on the same day and they are behind bars for 1 year, 5 months and 1 day.

Learned State Counsel, on instructions from the Investigating Officer, assisted by learned counsel for the complainant, opposes the prayer for grant of regular bail stating that serious allegations of conspiracy of murder have been levelled against them but is not in a position to controvert the submissions made by learned counsel for the petitioners.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioners have already suffered sufficient incarceration i.e. year, 5 months and 1 day, antecedents of the petitioners are clean, meaning thereby they are not habitual offenders, moreso, they have not played any active role in commissioning of the offence 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



19.09.2023 charges stands framed on 21.05.2024 out of total 22 prosecution witnesses, three PWs have been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, 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 Nimesh 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 petitioners are directed to be released on regular bail on their 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

12.12.2024
anuradha

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