



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-54183-2023

Date of Decision: August 13, 2024

KULWINDER SINGH @ GAGGU

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amandeep Chhabra, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J.(ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.45, dated 23.03.2021, under Sections 379-B, 34 of IPC (Sections 395, 427, 411 of IPC and Section 25 of Arms Act, 1959 added later on), registered at Police Station Bhawaingarh, District Sangrur, Punjab.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Copy of statement, Statement of Prem Singh S/o Gyan Singh, R/o Sadarpura, District Patiala, aged about 28 years, Mob. No.86999-36074. Stated that I am resident of abovementioned address. I am working as Salesman at



Surinder Fuel Station (ESSAR) Petrol Pump in the area of Village Lakhewal which is situated on Sangrur Patiala Road, District Sangrur. On 22.03.202 at about 11:30 pm, I was sitting in my office on petrol pump, then one young boy came and after moving in front of office, he went towards backside. On suspicion, I went behind that person to check the things and he after taking round of office, went back. Then I again came towards office side and saw that one Alto Car was standing near the office, in which 2/3 person were present and they parked their car near the machine, then I asked them amount for which they wanted to get petrol, but they alighted from the car and all four of them caught hold me. There was appeared to be pistol in one's hand, then they said to me took out the money and one point out the pistol upon my head. Due to fear, I gave them amount which was approximately Rs. 10,000/- from the office and my mobile phone Marka Oppo company color blue snatched by them forcibly, in which having No.86999-36074. Then they started giving beatings to me, then Sarabjit Singh S/o Shamsher Singh, R/o Behdpura and Subhash Yadav S/o Jai Parkash, R/o Bihar present in second office, came outside and then Sarabjit Singh due to fear without counting gave about Rs.50,000/- to them from the drawer of second office. They also snatched Mobile phone Redmi of Sarabjit Singh in which having No.62845-20975 and also snatched mobile phone of Subhash made VIVO having No.9876822806 and also stolen 3 bottles of 5/5 liters muglail oil and 10/12 bottles of one liter each and while going also theft DVR installed in the office and also broken the three cameras installed at machine and ran away their car towards Patiala. The descriptions of all of them are like that all were aged about 24/25 years and without turban, three have 5-5 ft. each and one boy is



longer and thin, to whom I can identify if they come in front of me. Then I went to my home on motorcycle at Village Sadarpur and disclosed about whole incident to Sarpanch jagddev Singh. Then we came at petrol pump and after calling Manager at petrol pump disclosed him about the incident. Then me and Sarpanch Jagdevi Singh came to inform you at Police Post Kalajhar, then you met at Bus Stand Chano alongwith police party. Statement is recorded to you, heard, which is correct. Action be taken against all the above said four.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that vide order dated 15.04.2024 petitioner was released on interim bail in the case considering the fact that only 07 witnesses have been examined out of total 35 prosecution witnesses despite that petitioner is suffering incarceration for more than 03 years 01 month 11 days.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition urging that recovered articles would depict involvement of the petitioner who has also been named in other two FIRs for the same offence and he is a habitual offender as is evident from the custody certificate. The petitioner is on production warrant as well in five cases wherein in one case bearing FIR No.44 dated 23.03.2021 under Section 395, 427, 506 IPC and Section 25 of Arms Act, registered at Police Station Sadar, he was acquitted.



4. **Analysis**

Be that as it may, having regard to the fact that long period of incarceration has already been suffered by the petitioner and trial is not moving at speed which was otherwise expected qua various multiple reasons. In the instant case, charges were framed on 22.09.2021 with 35 prosecution witnesses to be examined out of which only 11 have been made to depose so far, which is suffice enough for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

Reliance can be made 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 basic and 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 land the petitioner in a situation of denial of the concession of bail.

5. **DECISION:**

In view of the 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.

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

13.08.2024
Sangeeta

Whether reasoned/speaking: *Yes/No*
Whether reportable: *Yes/No*