

2024:PHHC:138822



214

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51118-2024
DECIDED ON: 23.10.2024

SOHIT

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana.

None for respondent No.2.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023, has been invoked for the grant of regular bail to the petitioner in FIR No. 175, dated 04.06.2024, under Sections 323, 324, 452, 506, 326, 201, 34 of IPC (Sections 307, 148, 149 of IPC has been deleted during investigation) and Sections 25/54/59 of Arms Act, registered at Police Station Kunjpura, District Karnal.

2. Facts

Facts as narrated in the FIR reads as under:-

The contents of application are as - "To the S.H.O. Sahab, Police Station, Kunjpura, Karnal. Subject:- Regarding committing deadly attack by coming at our godown. Sir, It is respectfully submitted that I, Gian Chand son of Sh. Piare Lal, am resident of House No. 308, Model Town, Karnal. My godown is situated in Newal and I do contractor work in Electricity Board. Today, from the morning, phone calls of threats were coming to my brother-in-law on Mobile No. 99929-59295, but, we felt that some person is making call in casual way and we remained working at our godown. In the meantime, this Youngman, along with his companions, were came at about time 1.30 P.M. at HP Petrol Pump near my godown and after making phone calls to our workers, they started calling them, But, our any worker was not gone there. In the meantime, at time about 2.00 P.M., they committed attack on our godown and on coming, they started attack on my brother-in-law, whose name is Mahender Monu. These were about 5-6 young men and all the above said young men were come by bringing swords, rod, hammers, pistol and other weapons along with them. Firstly, they tried to cut his both arms from swords, then his nerves of arms were cut. Thereafter, they were trying to hit on the head with hammer and Monu remained stopping the hammer again and again with his hands and Monu tried to save himself by running here and there and when the labour, present there, tried to stop them, then showed pistol to all persons and said that if any person come in between us, then we will kill him. Today, we have to kill him and let us do it. In the meantime, Monu closed himself in a room in the godown for saving his life. Then, the above said persons were gone from there. Sd/- Gian Chand Sharma- 9812080871". Police proceedings- today Incharge ASI is present in police station that Moharrar police station along with MLR No. MP/557/KNL/24 Dated 03.06.2024 of Mahinder Son of Shiv Ram, in which, doctor has mentioned total two injuries and Injury No.1 is mentioned as BLUNT and Injury No.2 is mentioned as SHARP and

mentioned about both as PSENDING ACTIVE BLEED ADVICE X-RAY and SURGEON ORTHO OPINION. From the contents of the application and from the perusal of the MLR, on finding commission of offence made out U/s 148, 149, 323, 324, 307, 452, 506 IPC.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the allegations put forth by the respondent No.2 is highly improbable qua the petitioner and no role has been attributed to him and rather the two injuries suffered by injured is attributed to the co-accused namely Sachin. He further submits that investigation is complete and Section 307 of IPC stands deleted in the FIR qua the petitioner.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He opposes the grant of regular on the account that though Section 307 of IPC stands deleted but petitioner alongwith other co-accused was attacked the brother-in-law of the complainant.

4. Analysis

Be that as it may, considering the fact that petitioner has suffered incarceration of 2 months and 23 days and is not involved in the other case, as is evident from the perusal of the custody certificate, investigation is complete, charges stands framed on 08.10.2024 and there are total 14 prosecution witnesses out of which none has been examined, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while

relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131.*** 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.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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.

23.10.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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