

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

CRM-M-51820-2024
DATE OF DECISION: 24.10.2024

LOVEPREET SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Kulwinder Singh, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked second time for seeking the concession of regular bail for the petitioner in FIR No.310 dated 16.11.2021, under Sections 302/120-B IPC registered at Police Station Sadar Mansa, District Mansa.

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

'Copy of statement: Statement of Baljit Kaur widow of Sukhdev Singh @ Billu son of Kaur Singh resident of Alam Patti Khyala Kalan, aged about 60 years Mob. No.9815350568. Stated that I am resident of above mentioned address and do domestic work. My marriage was solemnized about 32 years ago with Sukhdev Singh son of Kaur Singh resident of Khyala Kalan. From me and Sukhdev Singh, one son Makhan Singh @ Giani was born who is aged about 29 years, whose married was solemnized about 5 years ago with Amritpal Kaur d/o Harmail Singh son of Jora Singh resident of Lakhat Mal (Distt. Sirsa). After two months of marriage, my son got separated from me in house by making a wall



in the house. I and my son were living separately. About 9-10 months ago, child was born to Amritpal Kaur, who died at the time of birth. We have about one Killa of land. My son Makhan Singh was doing labour work and my daughter in law Amritpal Kaur was working in "Satluj Dhaga Mill", Talwandi Mansa Road in the area of Gehal, who was having illicit relations with Lovepreet Singh son of Surjit Singh resident of Khokhar Kalan, now resident of Dheer Wali Gali, Mansa, as Lovepreet Singh was also working in Satluj Dhaga Mill. Once or twice, Lovepreet Singh had come to the house of my son Makhan Singh, then my son Makhan Singh said to his wife Amritpal Kaur that who is this boy, due to which my son Makhan Singh became suspicious that he is having illicit relations with Amritpal Kaur and he was stopping Amritpal Kaur from doing so. Due to which altercation took place between them once/twice. Yesterday Amritpal Kaur my daughter in law went to his duty at Satluj Dhaga Mill at about 5 p.m. Amritpal Kaur in connivance with his lover Lovepreet Singh, in order to clear his way, yesterday Lovepreet Singh son of Surjit Singh resident of Khokhar Kalan now resident of Dheer Wali Gali Mansa while coming in the house of my son Makhan Singh murdered him. I had gone to Ulak in my relations. Then Amritpal Singh son of Harmail Singh resident of Khyala Khurd called us then I reached home along with my relatives. The dead body of my son was lying in the cot, he was having injuries on right ear and head, blood was there and green mark was clearly seen on neck. The murder of my son had been committed by my daughter in law in connivance with Lovepreet Singh son of Surjit Singh resident of Khokhar Kalan now resident of Dheer Wali Gali Mansa. Till now we were waiting for our relatives. Now I along with Amritpal Singh son of Harmail Singh resident of Khyala Khurd and respectable persons was coming to you for giving information. You have met at Bus Stand Khyala Kalan. Legal action be taken against above said Amritpal Kaur and Lovepreet Singh. Statement has been got recorded to you, heard and same is correct. RTI Baljit Kaur above said. Witness Sd/ Amritpal Singh son of Harmail Singh r/o Khyala Khurd. Attested

by Yadwinder Singh Insp. SHO P.S. Sadar Mansa dated 16.11.2021'.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and as per the allegations petitioner in connivance with wife of the deceased murdered son of the complainant namely Makhan Singh. He submits that there is no eye witness in the present case and the same is based only on circumstantial evidence. He further submits that the co-accused namely Amritpal Kaur -wife of the deceased has already been granted concession of bail by this Court vide order dated 14.05.2024 passed in CRM-M-17743-2024. He asserts that the trial is moving at snail's pace as is evident from the record produced by the State, as per the same after framing of charge on 18.05.2022, out of 22 PWs, only 6 PWs have been examined so far. He submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time.

On behalf of the State

On the other hand, learned 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 which, the petitioner is behind bars for 2 years, 11 months and 4 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in one more FIR, meaning thereby he is a habitual



offender but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 14.02.2022 and charges stands framed on 18.05.2022.

4. Analysis

Be that as it may, considering the facts that the petitioner has already suffered incarceration of 2 years, 11 months and 4 days and co-accused has already been granted concession of bail by this Court also 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 14.02.2022 and charges stands framed on 18.05.2022, out of 22 prosecution witnesses, only 6 PWs have been examined so far which is sufficient for this Court to infer that the trial is moving at snail's pace and conclusion of the same is likely to take considerable time, 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 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 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



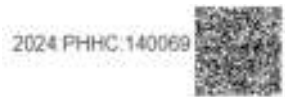
accused as is the mandate of the Apex court in “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC

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 aforesaid 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.



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

24.10.2024
anuradha

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