



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CRM-M-55363-2023

DATE OF DECISION: 31.07.2024

GURPREET SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S. Sidhu, Advocate and
Mr. Navjot 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 seeking the concession for the grant of regular bail to the petitioner in FIR No.104 dated 23.06.2023, under Sections 307/323/341/148 and 149 IPC, 1860 registered at Police Station Bhawanigarh, District Sangrur.

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

‘Copy of statement of Paramjit Singh alias Pammi son of Gurdayal Singh resident of village Bhattiwal Kalan PS Bhawanigarh aged 58 years Mobile No. 78148-15706. Stated that I am resident of the above said address and retired from Indian Army as Head-Constable and doing agriculture work. On 21-06-2023 at about 08:45 PM I was taking food for my son Kuldeep Singh and nephew Rajwinder Singh son of Nirbhai



Singh Village Bhattiwal Kalan in the field and I saw Jaskaran Singh son of Gurpreet Singh, Gurpreet Singh son of Rulda Singh, Gurmeet Singh son of Rulda Singh and 10-15 unidentified persons who were having sticks and baseball bats, they all surrounded my son. Jaskaran Singh had an sword in his hand, Gurpreet Singh had an iron rod in his hand, Gurmeet Singh had an iron pipe in his hand, Jaskaran Singh attacked upon my son with sword which hit the left side of my son's head. Gurpreet Singh and Gurmeet Singh were also beating my son Pardeep Singh with a rod and an iron pipe and while throwing him on the ground they alongwith unknown persons were beating him severely with rods, sticks and baseballs. I shouted and started to rescue him, then Gurmeet Singh hit me on my left eye and ear with an iron pipe. I shouted as "marta- marta" then my nephew Rajwinder Singh who already hide somewhere to save his life. Then I was beaten up by the unknown person, I became unconscious. When I become conscious, I found that my nephew Rajwinder Singh arranged a vehicle and admitted me to CHC Hospital Bhawanigarh and then referred me and my son Pardeep Singh to Government Hospital Sangrur, after seeing the our serious condition, we were referred from Government Hospital Sangrur to Rajindra Hospital, Patiala, where I am under-treatment. The motive behind the occurrence is that ancestral land which has been divided, due to dividing the land they have beaten. They argued with my nephew Rajwinder Singh on 21-06-2023 in the afternoon and lateron given beatings to us. Legal action should be taken against Jaskaran Singh, Gupreet Singh, Gurmeet Singh and 10-15 unknown persons. I got recorded my statement in presence of my son Pardeep Singh who is also admitted, which is read-over, listen and is correct Sd/- Paramjit Singh above, verified statement.



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He submits that there was a delay of two days in lodging the instant FIR. As per the alleged allegations, the petitioner along with other co-accused caused injuries upon the complainant party and is in custody since 23.06.2023.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 1 year, 1 month and 4 days.

Learned State Counsel submits on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the grounds that the petitioner is involved in other cases also and in the instant incident, the petitioner was armed with an iron rod and had hit the left side of the head of the complainant whereas all injuries attributed to the petitioner are declared to be grievous in nature, therefore, Section 307 IPC has rightly been attracted against the petitioner. He informs the Court that in this case Challan stands presented on 18.09.2023 and charges stands framed on 18.01.2024.

4. Analysis

From the above case, it can be culled out that the petitioner has been attributed injuries which are grievous in nature wherein he has already suffered period in custody i.e. 1 year, 1 month and 4 days 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 18.09.2023 and charges stands framed on 18.01.2024, out of 13 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

Reliance can be made upon the judgement of the Apex Court rendered in “***Dataram Singh vs. State of Uttar Pradesh and another;***, 2018 (2) RCR (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 fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution of India. This constitutional right cannot be denied to the

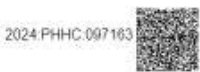


accused as is the mandate of the Apex court in “*Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna*”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation 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 for the concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439



Cr.P.C. 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

31.07.2024
anuradha

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