

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-52219-2024
DATE OF DECISION: 25.10.2024

GOURAV @ GORA

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Ashutosh Gupta, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhinta, 2023 for grant of Regular Bail to the Petitioner in FIR No. 121 dated 04.08.2024 under Sections 118 (1), 118(2) [added later on], 324(2), 190 and 191(2) of Bhartiya Nyaya Sanhinta (BNS), 2023 registered at Police Station: PS Malout, District: Sri Muktsar Sahib.

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

‘Statement of unknown Dheeraj Kumar, son of Satpal Galhotra, son of Lajpat Rai, resident of Gobind Nagar, near Water Works Office, Ward No. 03, Malout, aged around 43 years, mobile number 9464804197.1, residing at the aforementioned address, have a shop near Super Bazaar, near Janeja Hospital. I run a business selling garments and ready-made clothes at my shop Galhotra Garments. Today, around 10 AM, I was sitting in my shop when outside my shop, Rajkumar, Harish Kumar (sons of Madan Lal), Akshay (son of unknown) Sajan, son of unknown, Prem Kumar, Gora (son of Prem Kumar) Kiran Bala (wife of Ashwani



Kumar), residents of Malout, and some two other unidentified persons gathered outside my shop. They were holding swords and daggers. As soon as they arrived, they attacked my shop and broke glass door of my shop. I went outside to stop them, and when I confronted them, Rajkumar had a dagger in his hand, which he struck at me, hitting side of my left hand's palm. Prem Kumar struck me with an axe he was holding, hitting my right hand's thumb. Prem Kumar's son Gora hit my head with a sharp object. Rajkumar's nephew Sajan hit my nose with a stick. I raised an alarm, and other unidentified persons also started beating me. I ran into my shop to save myself, and seeing the gathering of people nearby, they closed the shutter of my shop and fled. A boy named Sonnu, who works at my shop, arranged for a vehicle and admitted me to the Civil Hospital, Malout, for treatment. They also beat one named Surinder Kumar, son of Harkrishan, resident of Village Malout, who also works at my shop and was trying to save me hitting on wrists of his right and left hands, causing injuries that required treatment. These people attacked me because they hold grudges against me for my work. The statement was written and read out to me, and I confirmed it as correct. Sd/- Dheeraj Kumar the above-named Complainant, Surinder Kumar son of Harkrishan Singh, Village Malout, Verified By ASI Jarnail Singh, PS City Mallot Dt. 04.08.2024.'

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, the petitioner has hit on the head of complainant with a sharp object, however, as per the MLR of the complainant dated 04.08.2024, the said injury has been given by a blunt object. He submits that there is unexplained delay of 10 hours in filing the present FIR and nothing has been recovered from the petitioner, added with the fact that, he is not involved in any other case, meaning thereby he is not a habitual offender.



He asserts that co-accused namely Sajan and Raj Kumar have been granted concession of anticipatory bail vide orders dated 10.09.2024 and 17.09.2024 passed in CRM-M-44897-2024 and CRM-M-46134-2024. He has argued that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 26 Prosecution Witnesses, none has been examined so far.

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 1 month and 29 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 and the injuries No. 3 and 4 attributed to the petitioner are grievous 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 22.10.2024 and charges are yet to be framed.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 1 month and 29 days, similarly situated co-accused have already been granted concession of bail by this Court, antecedents of the petitioner are clean. Moreso, qua the injury attributed to the petitioner no specific opinion regarding nature of the injury is coming forth which is also not clarified by the State Counsel from the record including the Medico Legal Report



dated 04.08.2024 (Annexur P-5) 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 22.10.2024 and charges are yet to be framed, out of 26 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 considerable time and 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 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

25.10.2024

anuradha

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*