



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

227

CRM-M-51798-2024
DATE OF DECISION: 24.10.2024

DALJEET SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sardavinder Goyal, Advocate with
Mr. Harish Marhia, 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 439 of Code of Criminal Procedure praying for grant of regular bail in FIR No. 44 dated 21.02.2024 under Sections 304, 34 IPC, Police Station Sultanpur Lodhi, Kapurthala.

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

‘Statement of Kala Singh son of Shingara Singh, resident of Ahli Kalan, Police Station Kabirpur, District Kapurthala, age about 55 years Mobile No., stated that I am resident of the above mentioned address and I am farmer. I have two daughters and one son. The eldest daughter is Sukhwinder Kaur, the son younger to her is Jaspinder Singh and the daughter younger to him is Jaskaran Kaur. My son Jaspinder Singh, whose age was 20 age, who was still unmarried, who was working as a Sewadar in Gurudwara Shri Ber Sahib, Sultanpur Lodhi for the last about 03



years. My brother-in-law (wife's brother) Sarwan Singh son of Pritam Singh, resident of Chak Patti Balu Bahadar Police Station Kabirpur, District Kapurthala is also working in Gurudwara Shri Ber Sahib, Sultanpur Lodhi as Security personnel. Alongwith my son Jaspinder Singh, two other boys, Daljit Singh son of Sohan Singh resident of Badewal, Police Station Haroli, District Una, Himachal Pradesh and Gurmit Singh son of Gurcharan Singh, resident of Bhatthal, Mehija Singh, Police Station Chaula Sahib, District Tarantarn, were also working in the Gurudwara Sahib. Daljit Singh and Gurmit Singh were living in the room, which was adjacent to the room of my son. On dated 11.01.2024, time about 11:00 AM me and my wife Gurmeet Kaur kept calling my son upon his phone but he did not pick our phone. We thought that Jaspinder Singh might be serving in the Gurudwara Sahib. But at about 7/7:30 PM, when Jaspinder Singh did not pick our phone then I alongwith my relatives Kulwinder Singh son of Gurmej Singh, Harjit Singh son of Darshan Singh, Karandeep Singh son of Kuldip Singh, residents of Ahli Kala, reached at Gurudwara Shri Ber Sahib, we could not see my son Jaspinder Singh anywhere. We searched him in his room and the area around to his room but we did not see Jaspinder Singh anywhere. At that time, the Sewadar Ekam Singh son of Balwinder Singh resident of Chak Patti Balu Bahadar, Police Station Kabirpur, District Kapurthala, told us that today, Jaspinder Singh was with Sewadars Daljit Singh and Gurmit Singh and I had seen him going with them in their room, when we reached to the room of Daljit Singh and Gurmit Singh then we saw that the door was locked from outside. The sewadar, who was living in the neighboring room of Daljit Singh and Gurmit Singh's room, took out the duplicate key of the room, which was kept under the mat, then after opening up the lock of the room, when we entered into the room, we saw that my son Jaspinder Singh was lying in unconscious condition on the double bed without having any movement, his phone was also on silent mode, we immediately arranged a vehicle and took my son Jaspinder Singh to Civil Hospital, Sultanpur Lodhi, where after checking, the doctor declared my son as dead. In this regard, on



dated 12.01.2024, the procedure under section 174 Cr.P.C. was conducted on the basis of my statement and his postmortem was done in the Civil Hospital, Sultanpur Lodhi. Me and my relatives knew nothing about the death of my son. But now I have come to know that with intention to kill my son Jaspinder Singh, his colleague sewadars Daljit Singh and Gurmit Singh had given some poisonous thing to my son and after locking up his room from outside, fled away from Gurudwara Sahib without telling anybody. I am confirmed that Daljit Singh and Gurmit Singh had killed my son by giving him some poisonous thing and they have committed a major criminal act by informing us about him and leaving him alone in the room because there is a possibility that if my son had received proper medical treatment then his life might have been saved but they had given some poisonous thing to my son and they have neither informed anybody in the Gurudwara Sahib nor us. The death of my son has been caused due to irresponsibility of Daljit Singh and Gurmit Singh as they had given some poisonous thing to my son. Appropriate legal action be taken against them. I am giving this statement in the presence of my wife Gurmit Kaur and my relatives Kulwinder Singh son of Gurmit Singh, resident of Ahli Kala and other respectable members of our village. Appropriate action be taken upon my statement. I have got written my statement, heard over and found it as correct. LTI (Kala Singh), said Kala Singh, Sd/- Gurmit Kaur, Sd/- Kulwinder Singh'

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 there is unexplained delay of 40 days in lodging the instant FIR. He further submits that there is two contradictory statements made by the complainant, therefore, no offence under Section 304, 34 IPC is made out and there is strong probability of his acquittal. He has further argued that the antecedents of the petitioner are clean and 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 12 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 7 months and 28 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail 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 23.04.2024 and charges stands framed on 25.09.2024.

4. Analysis

From the above case, it can be culled out that the petitioner has already suffered incarceration i.e. 7 months and 28 days there is unexplained delay of 40 days in lodging the FIR and there is contradictory statements recorded by the complainant, 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 23.04.2024 and charges stands framed on 25.09.2024, out of 12 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, 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 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 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

24.10.2024
anuradha

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