



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52373-2024
DECIDED ON: 25.10.2024

ANIL ALIAS CHOTTA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jangjit Singh Dahiya, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl. A.G., Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the third time under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.0047, dated 24.01.2022, under Sections 302, 34 IPC, Sections 201, 202 IPC added later on, registered at Police Station Sadar Sonipat, District Sonipat.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“To, the SHO PS Sadar Sonipat, sir it is requested that I Dharambir son of Fakir Chand Caste Jhimer, I am Resident of Banyapur that yesterday on dated 23.01.2022, At about 7 PM my son Bhola went alone from the home on his motorcycle Bajaj Palatina No.DL3SBK1667. He did not return home in the night

then in the morning we came to know that he is lying near Bainyanpur liquor shop along with his motorcycle. That I along with my brother Krishan went near the Bainyanpur Liquor shop then found that my son Bhola was lying dead along with his motorcycle and he has injuries near his ear on right side and on the head. That person has killed my son Bola by inflicting injuries on head and below the ear on right side. As of now we don't have suspicion on anybody but some unknown person have killed my son by inflicting injuries. League election be taken against them. I have given this complaint to you after getting it written from my relative satir son of Dhanpat Singh resident of Lal Darwaja Sonipat. My son was working as a Palumber. Sd/- Dharambir. Police proceedings. Today on dated 24.01.2022 MHC PS Sadar Sonipat had Informed me SI Dilawar that one person is lying dead nearby liquor shop. On the information I along with HC Bhim No. 2017 HC Ajmer No. 966, C. Johnny No. 2346 in government vehicle number HR 033 T 6919 driven by Bichha No.477 Reached near Bainyanpur Liquor shop for initiation of action whereafter waiting for someone the complainant Dharambir has given the above complaint to me SI that from the perusal of the complaint on finding the commission of offense under section 302 / 34 IPC, Therefore application is being sent to police station for registration of the case.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has drew attention of this Court to the deposition of PW-2 namely, Jitender, who though has been turned hostile but has stated in examination-in-chief that deceased Bhola had

died in a road side accident but not murdered by any person and he has further denied naming any of the accused persons to the police for holding them responsible for commissioning of the offence under Sections 302, 201, 202 read with Section 34 IPC.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He vehemently refers to deposition of PW-1 namely Dharambir (complainant) who has named the present petitioner for causing murder of his son.

4. **Analysis**

Be that as it may, having regard to the aforesaid submissions made on behalf of the respective counsels, the fact remains that PW-2 has turned hostile who was categorical in stating that he never named accused persons even the deceased has not been murdered by any person but rather was road side accident. Moreso, even on a minute scrutiny of statement of the complainant i.e PW-1, namely Dharambir, before the trial Court, the nature of injury and the weapon used by the petitioner are not coming forth. He also in his cross-examination could not deny the fact that liquor shop is situated at a distance of 1/2 kms and the deceased was lying dead in front of the said liquor shop and he has not seen all the accused persons committing offence.

Apart from the aforesaid contradictory deposition of the witnesses, the custody part also requires to be taken note of which is 02 years, 06 months and 22 days by now wherein charges were framed on 04.06.2022 and more than 2 years have been elapsed and the trial has not yet

completed inasmuch as out of total 24 prosecution witnesses, only 15 witnesses have been examined, one witness has been given up by the State and 8 witnesses are yet to be brought to the witness box, which is suffice for this Court to infer that the conclusion of the trial will take long time for which the petitioner cannot be detained behind the bars.

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

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 his 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.

25.10.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No