



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CRM-M-51717-2024
DATE OF DECISION: 24.10.2024

ABHISHEK ...PETITIONER

Versus

STATE OF UT, CHANDIGARH ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harpreet S. Multani, Advocate and
Mr. Harmanpreet S. Mander, Advocate for the petitioner(s).

Mr. Viranjeet Singh Mahal, Addl. P.P., UT Chandigarh

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the Petitioner in FIR No. 103 dated 08.07.2024 under Section 191(2), 191(3), 190, 109 BNS and 25/27/54/59 Arms Act, Police Station South Sector 34, Chandigarh.

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

‘Statement of Ankur Panwar son of Rajinder Singh resident of House No. 3211/1, Sector 44-D, Chandigarh aged about 28 years gave a statement that he is resident of above mentioned address and my permanent address is house no. 61/7, Gali No.4, Mohan Puri, Maujpur, Delhi and was presently working as Assistant Manager in Share Market at Motilal Oswal, SCO No. 44-45, Sector 9, Chandigarh. Today, at around 12:15/12:30 AM I along with my friends Khushwinder Singh and Harjinder Singh who stays with me went to the market of Sector 44-D, Chandigarh



for eating Pizza etc. But we found the market closed due to late hours. We started walking back towards our house and we were walking behind each other, Khushwinder Singh alias Khushi was walking in front of me and Harinder Singh was walking in front of me at some distance and were coming back while talking on our mobile phones with some persons, when we reached on the turn of House No. 3234, then suddenly from behind from the side of Divya Public School, two cars and a motorcycle came, and the persons who were sitting in these vehicles stopped the vehicles in front of me and many persons alighted from the cars and they were holding sticks and rod and swords and other sharp edged weapons in their hands and started walking towards me while abusing me and were saying to each other to kill me, by saying this they attacked me with sticks, swords and other sharp edged weapons and I tried to stop their blows with my hands and I fell on the ground and started shouting for help then my friend Harinder Singh started throwing stones at them and after hearing noise people started gathering on the spot then the assailants fled away in both the cars out of which one white colour swift car bearing and I do not know the colour of the other car, they ran away by reversing their vehicles and while abusing me. As blood was oozing from my head due to injuries caused by them, because of this reason I could not record the numbers of the vehicles. That I got to know later that the assailants in the white swift car and the other car and the white motorcycle whose number I noted as CH01AM3697, that while fleeing from the spot they have also fired gun shots in the air. My friends Khushwinder Singh alias Khushi and Harinder Singh and my neighbour Gagandeep Singh took me to the hospital, GMCH Sector 32, for treatment and after taking treatment I came back to my home. That the assailants come in white swift car and other car and motorcycle no. CH01AM3697 with an intention to kill me attacked me with sticks, swords and other sharp edged weapons and caused injuries on my head and on other places. Strict legal action be taken against them.”

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 the FIR was registered against some unknown persons. He submits that the petitioner was nominated on the basis of disclosure statement made by co-accused-Puneet Arora who has been granted bail by this Court vide order dated 15.10.2024 passed in CRM-M-49208-2024. He asserts that no specific role has been attributed to the petitioner and 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 3 months and 16 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that they can misuse the concession of bail but is not in a position to controvert the submissions made by counsel for the petitioner.

4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 3 months and 16 days, similarly situated co-accused has already been granted concession of bail by this Court, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt 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 *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.

24.10.2024

anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No