



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52879-2024
DECIDED ON: 16.12.2024

HARPREET SINGH @ HAPPY

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mayank Mathur, Advocate and
Ms. Shrinkhla Singh, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.109, dated 19.10.2023, under Sections 295, 295-A, 297, 120-B, 436 IPC, registered at Police Station Julkan, District Patiala.

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

“At this time, a statement is made by Gursahib Singh S/o Ratan Singh resident of village Mohalgarh Bana Julka district Patiala written INSP/SHO Kulvinder Singh, Julka Police Station, about registering a case against Harpreet Singh @Happy, son of Gurbhej Singh, resident of village Mohalgarh, District Patiala and Balvir Singh, son of Gurdial Singh, resident of Sanaur, Police Station Sanaur,

District Patiala, under Sections 295, 295A, 297 and 120B of the Indian Penal Code (IPC) was received through as per HC Balkar Singh 1165 at the police station, the contents of which is as follows " Statement of Gur Sahib Singh, son of Rattan Singh, resident of village Mohalgarh, Police Station Julka, Patiala district, age about 38 years, Mobile Number 95188-37561. He stated that I am a resident at the above-mentioned address and I drive a bus at Vivekanand High School. Today, I was sitting at the house of a resident of the village, Jatinder Singh's, son of Sher Singh, when Jatinder Singh received a call from Gurvinder Singh son of Jagir Singh, resident of our village, informing that Sri Guru Granth Sahib's (holy scripture) at our village's Gurdwara Sahib had caught fire. When I and Jatinder Singh reached Sri Guru Dwara Sahib around 3:00-3:30 PM, we entered inside and saw that the Sri Guru Granth Sahib Ji and its palanquin (palaki) were on fire. Some parts of Sri Guru Granth Sahib Maharaj Ji were also scattered upon the Thara Sahib. Upon hearing the commotion, Balvir Singh, son of Gurdial Singh, resident of Sanaur, and many people from the village gathered at the scene. We extinguished the fire by pouring water. Then, I, Jatinder Singh, Avtar Singh, son of Surjit Singh, and Dharaminder Singh, son of Ajit Singh, checked the CCTV cameras installed at Sri Gurudwara Sahib. We reviewed the footage through Narinder Singh (son of Nirmal Singh), resident of Devi Nagar, Police Station Julka. The footage revealed our village resident Harpreet Singh @ Happy (son of Gurbej Singh), resident of Mohalgarh, Police Station Julka, whom we identified responsible for setting the Sri Guru Granth Sahib on fire and separating some parts from the holy scripture, has done sacrilege which caused hurt to the hearts of the entire community and has

hurt the feeling of the community. If Granti Baba Balvir Singh or any member of his family had been present at the site, this incident could have been prevented. Legal action should be taken against Harpreet Singh @ Happy and justice should be delivered to the community/sangat.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that there is no material eye witness to the present occurrence and the only evidence is CCTV footage which the police authorities have already taken into custody, therefore, there is no question that the petitioner can tamper with any evidence. He further contends that the trial Court has overlooked a crucial aspect of the case that the petitioner has been declared mentally retarded since childhood and is unable to think like a sane person of his age and in fact the petitioner has been receiving weekly treatment from a psychiatrist even in the jail, as is evident from the trial Court's order dated 02.07.2024 (Annexure P-3). It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

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 seeks dismissal of the instant petition on the ground that the petitioner has committed a serious crime by setting on fire Shri Guru Granth Sahib Ji and also torn and scattered its parts and therefore, has hurted the sentiments of Sikhs.

4. Analysis

Be that as it may, considering the custody period i.e. 01 year, 01 month and 22 days for which the petitioner has suffered sufficient incarceration; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate, also considering the fact that the petitioner has been declared mentally retarded since childhood and is unable to think like a prudent person of his age and in fact the petitioner has been receiving weekly treatment from a psychiatrist even in the jail.

Apart from above, investigation is complete in the present case, challan stands presented to Court on 13.12.2023, charges have been framed on 29.04.2024 and out of total 24 prosecution witnesses, only 01 witness has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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.

16.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No