

days ago, my husband, Kewal Singh, asked for motorcycle-Rehri from Sukhchain Singh, alias Bani Fauzi son of Sukhpal Singh, who is our neighbour, resident of Berawal and had gone on it. The rear wooden plank of the motorcycle-Rehri of Sukhchain Singh had fallen down from my husband Kewal Singh, due to which today morning on 03.04.2024, • Sukhchain Singh alias Bani Fauzi took Rs.200/- from my husband. It would be 05:30 o clock in the evening that my husband Kewal Singh was standing outside our house and in front of the shop of Sukhchain Singh alias Bani, which was rented out to Gurlal Singh alias Guri son of Sartar Singh resident of Gurne Kala, who is doing his DJ system work and I was also standing at the main gate of our house. Then Sukhchan Singh alias Bani Fauzi came there and said to my husband Kewal Singh that you are defaming me in the whole village by paying me Rs.200/- for a wooden plank. Gurlal Singh alias Guri came out from his shop holding an iron Patti in his hand. Then Sukhchan Singh by instigating Gurlal Singh said that today we will teach a lesson to Kewal Singh for defaming me in the village. Then Gurlal Singh alias Guri hit my husband Kewal Singh on his head with the intention of killing him with Iron Patti in his hand, due to which my husband fell on the ground. Then Gurlal Singh hit the Iron Patti on the right leg right foot of my husband and while my husband had fallen down, then Sukhchain Singh kicked my husband with his feet on his back. I ran and shouted Marta Marta in order to save my husband, then Sukhchain Singh and Gurlal Singh went from the spot with their respective weapon. Then in the meantime my Uncle father-in-law Amrik Singh, son of Gurdayal Singh and my son-in-law Hardeep Singh of Borewal came on spot, who after arranging the vehicle had admitted my husband Kewal Singh to Civil Hospital Mansa for treatment, where now I came to know through phone that my husband is being taken to a big hospital for better treatment. Gurlal Singh and Sukhchain Singh alias Bani Fauzi in connivance with each other, gave injuries to my husband Kewal Singh with intention to kill him. Please take action against them.”

3. **Submissions**

On behalf of the petitioner:-

It has been contended on behalf of the petitioner that as per the MLR, the petitioner has been attributed four injuries on the head, right leg and right foot of the husband of the complainant and none of the injuries have been declared dangerous to life, hence, Section 307 IPC would not be attracted. He has put

reliance on the fact that a compromise has been effected between the parties and considering the said fact, vide order dated 04.05.2024 (Annexure P-2), the co-accused namely Sukhchain Singh @Bani Fauji has already been extended the benefit of anticipatory bail by learned trial Court. The petitioner is also similarly situated with the co-accused, as none of the injuries suffered by the injured has been declared dangerous to life.

On behalf of respondent-State

Learned State counsel has prayed for dismissal of the present petition stating that the allegation against the petitioner is that he caused injuries on the head, right leg and right foot of Kewal Singh with an iron patti. Thus, keeping in view the nature and gravity of offence, he does not deserve the concession of regular bail. Though he could not controvert the factum of compromise.

As per the custody certificate filed by learned State counsel, the petitioner has suffered incarceration for a period of 6 months and 20 days, as of now, who is not involved in any other case of any nature whatsoever.

4. Analysis

Considering the fact the parties have compromised the matter, meaning thereby, there is every probability that the petitioner will earn acquittal apart from the fact that challan stands presented on 01.07.2024, wherein, 15 prosecution witnesses have been cited, which is sufficient for this Court to infer that conclusion of trial would certainly take sufficient time, this Court is of the considered view that no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex

Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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.

28.10.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

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