

2024:PHHC:141610



220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52739-2024
DECIDED ON: 28.10.2024

SIDHARTH DAHIYA @ SUNNY

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rakesh Kumar Lathwal, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

Mr. Anil Rathee, Advocate
for respondent No.2-complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS has been invoked seeking regular bail to the petitioner in FIR No.457, dated 15.08.2024, under Sections 3 (5), 304, 309(4), 238 (a) (added later on) of BNS, 2023, registered at Police Station Kharkhoda, District Sonipat (Haryana).

2. *Facts*

The facts as narrated in the FIR reads as under:-

To, SHO Sir, Police Station Kharkhoda, Sir, requested that I am Rohit son of Dharampal and I am resident of village Sisana and working in ZOMAT- Sonipat. That yesterday on dated 14.08.2024, time 10:40 pm,

I left for home on my motor cycle bearing registration No. HR-79D1286. That time at about 11.45 pm, when I reached near Kharkhoda Sisana road, near about 1 KM before Nariyana Ashram, two boys came on Splendor motor cycle and stopped near me on the pretext of asking for oil. Thereafter one boy had taken out knife and both the boys started saying that give them whatever I have. Thereafter, they snatched my mobile phone Mark- VVIO Y22, green color and Rs. 5,000/-and ran away towards village Sisana. I can identify one boy if he comes in front of me. One of boy, who has knife has covered his face with cloth. My phone belong to my brother Vikas and I took to him to whom Sim No. 8053545034 and 8429410435 and IMEI No. 8670950677625171 and 867095067762163. It is therefore requested that searched the unknown persons who committed the incident and legal action be taken against them. Sd/- Rohit, 7404675034"

3. **Submissions**

On behalf of the petitioner:-

It has been contended on behalf of the petitioner that the petitioner has been falsely implicated in the present case, as is evident from the fact that FIR stands registered on 15.08.2024 and the complainant got registered his supplementary statement on 19.08.2024 wherein, he has named the petitioner as an accused. He has stated that a compromise has been effected between the parties, which has been reduced into writing vide compromise deed dated 16.10.2024 (Annexure P-1).

On behalf of respondent-State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. As per the said custody certificate, the petitioner has suffered incarceration for a period of 2 months and 05 days, as of now, who is not involved in any other case of any nature whatsoever. Though he could not controvert the factum of compromise, which is annexed with the present petition as Annexure P-1.

On behalf of respondent No.2-complainant.

Learned counsel for respondent No.2 has not controverted the fact that the parties have settled the dispute amicably.

4. Analysis

Considering the fact that the parties have compromised the matter, which is annexed with the present petition as Annexure P-1, meaning thereby, there is every probability that the petitioner will earn acquittal apart from the fact that challan stands presented on 06.09.2024, wherein, 11 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

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No