

2024:PHHC:141572



219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52725-2024
DECIDED ON: 28.10.2024

KABIR SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

Mr. Ibadat S. Randhawa, Advocate
for respondent No.2.

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. 130, dated 04.08.2024, under Sections 109, 118(2), 118(1), 115(2), 190 of BNS 2023 and Section 3(5) and 238 of BNS, 2023 added later on), registered at Police Station City Nawanshahar, District SBS Nagar (Annexure P-1).

2. *Facts*

The factual matrix of the present case is that the present FIR stands registered on the basis of statement of the complainant Ashwani Kumar S/o Kulwinder Singh under Sections 109/118(2)/118(1)/115(2)/190 BNS 2023, against the accused and others. According to him, he is a student of [BSC.IT](#) 3rd semester, second year in R.K. Arya College Rahon Road Nawanshahr. Rajvir Singh S/o

Narinder Singh is a student of BA of his college. He is known to him. Two months ago Prabhjot Singh S/o Jagtar Singh had come to his college to seek admission. He has acquaintance with him. On 02.08.2024 at about 11:00Am he was present in his college, where Rajvir and Prabhjot met him. Arun Gill made a comment to Prabhjot to keep cool (thanda ho). Prabhjot gave slaps to Arun Singh Gill and in support of Arun Singh Gill some other students also gathered there. Arun Singh Gill remained inside the college. He, Prabhjot Singh and Rajbir went towards gate of college, where Kabir Singh, Manvir Singh students of their college along with Prince @ Billa and two unknown persons were present there. Kabir Singh attacked Prabhjot Singh with sharp edged iron Kirch and extorted the co-accused that Prabhjot Singh remains in high spirits and he be killed today. Manvir Singh and Prince @ • Billa being accomplice of Kabir Singh attacked Prabhjot Singh. Manvir Singh attacked Prabhjot Singh with his Kada, Prince @ Billa attacked with the wooden stick used in the spade (in common parlance known as Vanja). He and Rajbir tried to rescue Prabhjot from the assailants but Kabir and his accomplice gave them fist and leg blows. Kabir also gave krich blow to him which landed on the back of his head. Thereafter other accused gave injuries to Rajbir. The victims were in pool of blood. Alarm was raised Mar ditta Mar ditta, Bachao Bachao, which attracted other students. Kabir, Manvir Singh, Prince and two unknown persons ran away from the spot with their respective weapons. Prabhjot was taken to Civil Hospital Nawanshahr, thereafter he was taken to Raja Hosiptal Nawanshahr from where he was shifted to CMC

3. Submissions

On behalf of the petitioner:-

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case. Even, as per version of the FIR, no

offence has been made out against the petitioner. He has further contended that a compromise has been effected between the parties, which has been reduced into writing vide compromise deed dated 04.10.2024 (Annexure P-2).

On behalf of respondent-State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. As per the custody certificate the petitioner has suffered incarceration for a period of 2 months and 20 days, as of now, who is not involved in any other case of any nature whatsoever. He could not controvert the factum of compromise.

On behalf of complainant

Learned counsel for the complainant has placed on record the affidavits of respondent No.2-Ashwani Kumar-complainant and victims namely Prabhjot Singh and Rajvir Singh, which are taken on record as Documents A to C, to say that with the intervention of respectable, friends and common relatives, the parties have settled the dispute amicably. It is further alleged in those affidavits that they do not wish to prosecute the accused in the said case and has no objection, if the accused is granted bail.

4. Analysis

Considering the fact that the parties have compromised the matter, as is evident from the affidavits of complainant as well as victims, meaning thereby, there is every probability that the petitioner will earn acquittal apart from the fact that challan stands presented on 23.10.2024, wherein, 16 prosecution witnesses have been cited, which is sufficient for this Court to infer that conclusion of trial would certainly take long 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>