



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

215

CRM-M-53013-2024

DATE OF DECISION: 29.10.2024

CHARANPREET SINGH @ GOGI

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. L.M. Gulati, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

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SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.0503 dated 12.10.2023, under sections 10/12/6 of POCSO Act, 2012 and Section 342/506 of IPC, registered at Police Station Baldev Nagar, District Ambala.

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

*‘Statement of Vijay Kumar S/O Sh. Sukhdev no.2234/10 Kumar resident Subhash of house Nagar Ambala city aged 42 years, mobile no.9355318595. Stated that I am a resident of the above mentioned address. I am working as conductor in Haryana Roadways. My wife does domestic work. I have 2 children, consisting of a boy namely Krish aged 11 years and a girl Suhani aged 8 years. My son Krish studies in 6TH CLASS in A.K AK PUBLIC SCHOOL Baldev Nagar Ambala city. My son Krish had summer vacation from school in the month of June 2023. My son Krish used to live in our own house. During this time, our*



*neighbour Gogi son of Kanti and Krishna son of unknown, resident of Subhash Nagar Ambala city told my son to come outside and play. On the pretext of playing, Gogi took my son to his house and after locking the house, Gogi put his penis in my son Krish's mouth and tried to put it in his anus. My son made noise and my son Krish ran away from there. After about 5-6 days, our neighbor Krishna took my son to his house and he also behaved with my son like Gogi. After that, in the month of August, my son Krish started saying that he was having pain in his stomach. Due to pain in his stomach, I got him checked in many hospitals and also got him checked at PGI Chandigarh. On 10.10.2023, my son Krish told me that I was scared and was not telling you. During the summer vacation, Gogi and Krishna had put their penis in my mouth and tried to put it in my anus. Gogi and Krishna had threatened my son that if he tells anyone, they will kill him. My son was scared and nervous. After that, I got my son Krish admitted to PGI SEC 12, Chandigarh. He is undergoing treatment at PGI. Gogi and Krishna have committed wrong act with my son Krish. Legal action should be taken against them. I have written my statement to you. You have heard and read it. It is correct. Sd/- VIJAY KUMAR ATTESTED P/SI DEVENDER KAUR PS BALDEV NAGAR DT 12.10.2023.'*

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioner contends that there is an inordinate delay of 4 months in lodging the FIR and the story of the prosecution is highly improbable in light of the fact that alleged occurrence has taken place in the month of August, 2023 whereas the victim narrated the whole story only after he developed the stomach pain on 10.10.2023. He has argued that as per the narrated story and facts mentioned in the FIR as well as the depositions of PW-1-victim and his father PW-2 namely Vijay Kumar, no overt act can be attributed to



conclude that on account of such alleged occurrence there was pain in stomach and for that medical treatment was required and it is on these lines the story alleged is liable to be disbelieved. He has further argued that the antecedents of the petitioner are clean and no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 13 Prosecution Witnesses, only 5 PWs have been examined so far.

Notice of motion.

On the asking of Court, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State.

**On behalf of the State**

Learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for the last 1 year and 1 day.

He on instructions from the Investigating Officer opposes the prayer for grant of regular bail but could not controvert the above narrated circumstances which raises a doubt that such incident might have taken place. He informs the Court that in the present FIR challan stands presented on 22.12.2023 and charges stands framed on 11.01.2024.

**4. Analysis**

However, this Court having regard to the submissions made on behalf of the counsel for the parties and looking at the totality of the facts as has been unfolded and the period of incarceration undergone by the petitioner i.e. 1 year and 1 day wherein out of 13 prosecution witnesses, only 5 PWs have been examined so far and nothing remains to be recovered or examined from the present petitioner since the complainant already stands examined in the witness box before the Trial



Court, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, and therefore, 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.

(SANDEEP MOUDGIL)  
JUDGE

29.10.2024  
anuradha

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