



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

216

CRM-M-53604-2024

DATE OF DECISION: 05.11.2024

SANAM @ ABU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nitin Meel, Advocate for the petitioner(s).
Mr. Malkiat Singh, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 of BNSS, 2023 for releasing the petitioner on regular bail in case FIR No.47 dated 21.03.2024 under Sections 332, 353, 186, 379-B, 506, 427, 148, 149, 225 of IPC, 1860 (Section 225 added lateron), Police Station Guruharsahai, District Ferozepur (Annexure P-1).

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

‘Police Station Guru Harsahai, Statement of PHG Volunteer Kuldeep Singh no. 5442, B company 05/Bn Punjab Homeguards Guru Harsahai son of Shri Anoop Singh r/o Maade Kalan aged about 57 years MB: 99149-29445 stated that I am posted on a General duty at Police Station Guru Harsahai in Punjab Home Guards. On 19.03.2024 me and PHG Volunteer Gurwinder Singh no. 5326 were on patrolling duty in the town of Guru Harsahai from 8:00 PM to 8:00 am and we were given a motor cycle Pulsar No. PB-65B E-7423 and a walkie-talkie set with serial number 0342979 including battery, belt buckle and antenna was issued in my name and we both motor cycles were



patrolling in the town Guru Harsahai and giving hooters keeping security in the street mohalla. At around 1-30 am, when we were present at Vishwakarma Chowk, 04 motorcycles from Faridkot road on which 3/3 persons were sitting, out of which we could only read the numbers of two motorcycles Pulsar No. 2090 and one motorcycle No. 2643. We signaled them to stop by giving hooter to check them but the driver of the Pulsar motorcycle kicked our motorcycle and tried to throw us down, but we started chasing them on Gudardandi Road on our motorcycle which was driven by my colleague PHG Gurwinder Singh No. 5326. When we reached at Railway Crossing Gudardandi Road then their motorcycle number 2643 jumped and one person sitting behind him fell down, who got up and ran towards the Railway Basti Road but we apprehended him. We started going towards the police station by taking him. When we reached across the signal of the railway line then all the above persons who were armed with baseball, Swords and Kappas surrounded us and after beating us, they took away the young man we had captured because they were large in numbers. They also snatched the walkie-talkie serial number 0342979 hung on my left shoulder including battery, belt buckle and antenna. In order to get back the walkie-talkie set I caught the motorcycle but they hit me with the weapons on my head, right arm, little finger of my right hand, rightshoulder and on the left knee and gave injuries to me and badly smashed our official motorcycle with weapons and deflated both the tires of our motorcycle and threatened to kill us and ran away from the spot. My colleague volunteer Gurvinder Singh no. 5326 called to the police station and then force arrived and they saved me and because of my injuries, I was first admitted to the Civil Hospital Guru Harsahai and then referred from there I was admitted to the Civil Hospital Ferozepur, where Doctor treated me and today Discharged me from hospital. From the above accused persons, names of three persons Sanam Singh alias Abu son of Karam Singh resident of Basti Boharian, Kulwinder Singh son of Sohan Singh r/o Dona Mattar Gajniwala of Singh, Vijay Gorian son of Jassa Singh resident of Sahanke Mamdot and Lovely son of Mukhtiar



Singh r/o Megha Rai Uttar has been came into the light and I can also identify the rest of the accused persons when they come in front of me. Appropriate legal action should be taken against the above accused persons. The statement has been record, heard and is correct. Sd/ PHG Kulwinder Singh no. 5442 B Company 05/BN Punjab Home Guards Gur Harsahai, witnessed Sd/- PHG Volunteer Gurwinder Singh no. 5326 verified Sd/- Atma Singh ASI PS Guru Harsahai Date: 21.03.2024.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and the present FIR is only a result of an argument that took place between the police party and the petitioner. He submits that as per the allegations levelled against him are that he being a member of unlawful assembly caused multiple injuries to the Punjab Home Guard Volunteers who was on duty and obstructed them in performing their duties. He submits that as per the medical record (Annexure P-3), no injury was received by the police persons. He has further argued that the antecedents of the petitioner are clean. He further submits that 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, none has been examined so far.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 5 months and 26 days.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that serious allegation of beating to Punjab Home Guard Volunteers are levelled against the petitioner but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 08.7.2024 and charges are yet to be framed.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 5 months and 26 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, no further recovery is to be made from the petitioner and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 08.7.2024 and charges are yet to be framed, out of 13 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time 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

05.11.2024
anuradha

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