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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54102-2024

Date of decision: 06.11.2024

Vijay Kumar Alias Kala

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Paras Jagga, Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of regular bail for the petitioner in FIR No.46 dated 25.02.2024 under Sections 395,384,120-B IPC and (Sections 473 and 411 IPC added later on) registered at P.S. Sahnewal, District Police Commissionerate Ludhiana.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“ Statement of Amarjit Yadav son of Ram Nath Yadav, resident of village Parsa @ Sirsiya, Police station Tamkhui Road, District Khushi Nagar, UP at present of street no 6/7, new Satguru Nagar, Lohara, Police Station Sahnewal, Ludhiana aged about 43 years, Mobile no 98726-49186 that I am the resident of the above said address and works as a Manager in Bhavya Enterprises Factory, Kanganwal Road, Jaspal Banger. The accounts pertaining to the cash of the company and with regard to the workers is retained with me. On dated 24.02.2024, advance was given to the workers and the remaining amount out of that taken at home by me and on dated 24.02.024 at time around 9.30 PM, I was present at my home then 7/8 unknown persons having muffled faces come from



outside, who were holding iron rods and dattar in their hands. Three persons out of them, held me and two persons caught hold my son and made him stand with wall on one side and the other persons by breaking lock of my Almirah, took out the cash lying in that, gold and mobile phone make INFINIX NOTE- 11 containing SIM no. 8264734186 and fled away from the spot. I kept on to search them my own level till now. Now I have come to know that the persons who snatched my money are Vijay @ Kala son of Ram Lal, Mohalla New Satguru Nagar, Ludhiana, Harjinder Singh Sukhvir Singh @Fauji son of Gurcharan Singh resident of near Malli Chowk, Ludhiana, Tat son of Sarwan Singh resident of Near Bhutni Dealer, GaribNagri, Jaspal Banger, Ludhiana, Deepak son of Sarwan Singh resident of Near Bhutni Dealer, Garib Nagri, Jaspal Banger, Ludhiana, Abhisek @ Chrikut, Deepak Gupta son of Amrik Gupta resident of Near Mahadev Mandir, Mahadev Nagar, Ludhiana and fled away by snatching the mobile. I will inform you later on, after checking about the money and gold as how much that was. Today, I alongwith Gurdeep Singh son of S. Mehar Singh resident of Model Town Extension Kothi no. 3727/23, Ludhiana were coming to inform you, you have met, statement has been got recorded, heard, it is correct. Appropriate legal action may be taken against the above said persons. Sd/- Amarjeet Yadav. ”

Contentions

On behalf of the petitioner

3. The Ld. counsel for the petitioner submits that the present petitioner has been falsely embroiled and the alleged recovery has been falsely planted upon him and now nothing is to be recovered from him as recovery whatsoever was there stands effected and the other co-accused stands enlarged on regular bail vide detailed order of this Court. He further submits that out of total cited 13 prosecution witnesses, none has been examined so far.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and does not dispute that no prosecution

witnesses has been examined out of total 13 witnesses. Challan was presented on



24.04.2024 and charges were framed on 06.09.2024. The Ld. State counsel fairly submits that petitioner is behind bars for almost 08 months and 02 days.

Analysis

5. Be that as it may, the charges have been framed on 06.09.2024 and out of total 13 PWs cited none has been examined so far meaning thereby the trial proceedings are moving at a snail pace. The petitioner is behind bars for almost 08 months and 02 days, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period. Further, 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 ReInhuman 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.”

6. 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 as 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 Khatoun and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that the 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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under 483 of BNSS, 2023 on him 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.

(SANDEEP MOUDGIL)
JUDGE

06.11.2024
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No