



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

217 CRM-M-54038-2024
DATE OF DECISION: 28.11.2024

KULDEEP SINGH ...PETITIONER

Versus

THE STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vidit Bansal, Advocate for the petitioner(s).
Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 of BNSS seeking the concession of regular bail for the petitioner in FIR No.50 dated 23.03.2023, under Sections 302, 120-B and 34 IPC registered at Police Station Dharamkot, Moga.

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

*‘statement of Kashmir Singh son of Balkar Singh son of Nihal Singh resident of Sherpur Taiba aged about 50 years, mob. No. 9463780188, it is stated that I am resident of above mentioned address and working as labourer. I have two daughters and two sons. My elder daughter namely Amarjit Kaur Babbu aged about 25 years performed love marriage with Balwinder Singh @ Bindu son of Mangat Singh of our village 6 years ago. They were blessed with 2 children. Balwinder Singh Bindu is habitual of selling intoxicants and he had illicit relations with other women. My daughter used to forbade him for the same. Due to which there used to be quarrel'*Contents: Copy of statement, statement of Kashmir Singh son of Balkar Singh son of Nihal Singh resident of



Sherpur Taiba aged about 50 years, mob. No. 9463780188, it is stated that I am resident of above mentioned address and working as labourer. I have two daughters and two sons. My elder daughter namely Amarjit Kaur Babbu aged about 25 years performed love marriage with Balwinder Singh @ Bindu son of Mangat Singh of our village 6 years ago. They were blessed Balwinder Singh Bindu is with habitual 2 of children. selling intoxicants and he had illicit relations with other women. My daughter used to forbade him for the same. Due to which there used to be quarrel among them. Two days ago Balwinder Singh had also withdrawn Rs. 80, 000/- from the bank a/c of my daughter. My daughter informed me about the same. Yesterday at about 10 in the night Balwinder Singh called me that "at about 9:30 I along with my wife Amarjit Kaur Babbu was coming towards our village Sherpur Taiba from village Dholewala on my motorcycle. When we reached at bridge of canal in the revenue limits of village Sherpur Taiba then 6 persons riding on 3 motorcycles encircled us and gave injuries to my wife. All the persons ran away from the spot and I also ran away from the spot. When I along with my brother Jagir Singh were about to leaving for the spot then we came to know that my daughter has been murdered and Balwinder Singh etc has brought the dead body at home and Balwinder Singh etc. has called the police officials and kept the dead body at the Mortuary House of CH/Moga. Thereafter we reached at Civil Hospital Moga and had seen the dead body of our daughter and there was cut mark on her right shoulder and there were other injuries. It seems that she was strangulated also. We are sure that said Singh Bindu, Jyoti, Sukhwinder Singh Gurpreet Singh Gopi son of Mehar Singh resident of Daulewala Mayar and other unknown persons who altogether are indulged in the business of drugs, under their preplanned conspiracy has murdered my daughter Amarjit Kaur Babbu. I after asking my nephew namely Kirtan Singh son of Jagir Singh to stay near the dead body was coming towards you for recording my statement. You have met at Goal Chowk Dharamkot. Kindly take action. I have read and heard it as correct. LTI/ Kashmir Singh verified SD/



*Jangir Singh (Brother) Attested SD/ Jaswinder Singh INSP SHO
PS Dharmakot dated 23.03.2023.'*

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 on the statement of complainant vide supplementary challan dated 24.03.2023 and thereafter supplementary charge sheet was filed in the Trial Court. He submits that the petitioner was earlier not named in the FIR and there is unexplained delay of 1 day in lodging the instant FIR. A perusal of the disclosure statement/supplementary statement of the complainant depicts that the name of the petitioner along with another person has surfaced referring to the unknown person but no active role or act has been attributed. The relevant part from the challan which has been produced by the State Counsel would reveal as under :-

'Supplementary Statement of Kashmir Singh son of Balkar Singh, resident of Sherpur Taiba, District Moga, related to FIR No.50 dated 23.03.2023, under Sections 302, 120- B, 34 IPC, Police Station Dharamkot, under Section 161 of the Cr.P.C. It is stated that I am the resident of above stated address and work as a laborer. Yesterday, on 23.03.2023, I personally gave my statement to your good self that Balwinder Singh alias Bindu son of Mangat Singh, resident of Sherpur Taiba, Jyoti daughter of Sarwan Singh son of Bakhshish Singh, Sukhwinder Singh alias Gurpreet Singh son of Mehar Singh, residents Daulewala Mayaar, District Moga, and of two unknown persons were involved, against whom the case got registered. In the case, I had referred to two unknown persons, and I have now come to know that these individuals are Kuldeep Singh alias Madda alias Kaka son of Veer Singh, resident of Sherpur Taiba, and Gurwinder Singh alias Gori son of Harbans Singh, resident of Sherpur Taiba, District Moga. They are also



involved in the murder of my daughter. These individuals should also be nominated in the present case, and justice should be provided to me. My statement has been recorded, heard, and deemed correct.'

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 1 year, 7 months and 30 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that stating that the petitioner is involved in other FIRs, meaning thereby he is a habitual offender but is not in a position to controvert the submissions made by learned counsel for the petitioner.

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. 1 year, 7 months and 30 days, moreso, when this Court asked the State Counsel for any incriminating material supporting the supplementary statement of the complainant, he could not show any cogent material or any piece of evidence to prima facie show the involvement of the petitioner in the instant FIR 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 20.06.2023 charges stands framed on 11.12.2023 out of 13 prosecution witnesses, only three PWs have 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “**Baljinder Singh alias Rock vs. State of Punjab**” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the



criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

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

28.11.2024
anuradha

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