

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

220 CRM-M-53899-2024
DATE OF DECISION: 06.11.2024

ANKIT ALIAS MANNA ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravinder Phogat, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 BNSS, 2023 for grant of Regular Bail to the petitioner in FIR No. 025 dated 29.01.2024 under Sections 147, 148, 149, 323, 341, 506 IPC 1860, Registered at Police Station Tosham, District Bhiwani, Haryana (later during investigation sections 325 and 307 of IPC are added on 14.03.2024.

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

‘To the Incharge police post, Kairu Sir, it is requested that I, Sandeep, son of Vikram Singh, resident of Village Kairu, District Bhiwani, on 26.04.24, along with Devender son of Surendra and Suresh son of Bhanwar Singh, resident of Kairu, came to the village from our fields. We left Suresh at Mata Chowk and both I and Devender were going home on a motorcycle. When we reached in the street near Hanuman Temple Kairu at around 9:30 PM, we saw Sandeep alias Kalia son of Rajbir, Dholiya son of Krishna Kuldeep son of Rajendra, Pradeep son Devi Lal met us in the



street, Sandeep who stopped us and immediately hit our motorcycle No. HR-48-D- 5339 with an axe and started abusing us and started fighting with us. Kuldeep son Rajendra hit me with a Danda and Dholiya Son Krishna hit with Rod and Ankit alias Mana has beaten Devender with sticks, Devendra fell down, then everyone hit us, then Prahlad son Samuder and my nephew Anand came there who freed us, then later when we came to know that Ramkumar son Harnam Singh resident of Kairu who came to street to stop our fight. Where Ramkumar was injured by Pradeep son of Devi Singh, Lalit son of Umed Singh, Ankit son of Prempal, Umed son of Krishna, Kuldeep son of Rajendra, Sandeep son of Rajbir, Manjeet son of Mahendra with sword, axe and stick, who have been got freed by Sanjay son of Rajendra resident of Kairu and later got Ramkumar admitted to the hospital by Dhansingh and his family members. About 15/20 minutes after our fight, he got injuries. Everyone have threatened us to kill. Legal action be taken on our application. Ramkumar is admitted in PGI Rohtak who cannot speak due to severe injury on his mouth. We were discharged from the PGI after treatment and when Ramkumar regains consciousness and speaks, only then he can give the further information. Our application has been given to you applicant Sandeep son of Vikram Singh village Kairu Mo. No. 9728772870, Devendra son of Surendra Mo. No. 8053420901, Police action On date 27.01.24, information was received in through telephone that Devendra son of Sandeep, Sandeep son of Vikram, Sandeep son of Rajbir, Pradeep son of Deva resident of Village Kairu have been admitted to GH Bhiwani due to injuries sustained in a fight and being referred to PGIMS Rohtak, on which information action was taken and 1 HC along with fellow employee SPO Vijay Kumar 271 reached GH Bhiwani and obtained the copy of the MLR's of the injured and reached PGIMS Rohtak, and then got the information from police station Tosham about admission of Ramkumar and got the copy of MLR of Ramkumar and both the application were brought in the notice of the doctor then it came in the notice that Sandeep and Devender were discharged after checkup and injured Ramkumar was found



to admitted in ward no. 4. Doctor has informed that the patient is unfit to make the statement and no other was found to make statement of the incident. Today the present application is submitted by Sandeep son of Vikaram and Devender son of Surrender to EASI Rajesh Kumar 291 was present in Chowki Kairu and MLR NO. MK/GH/BWN/19/2024 Dated 27.01.24 were in two injuries found on Sandeep KUO BLUNT Injury No. 1 ADV. NCCT HEAD NEURO SURGEON OPINION OR INJURY 02 ADV. X-RAY ORTHO OPINION AND MLR NO MK/GH/BWN/18/2024 Dated 27.01.24 Total 3 injuries to Devendra KUO BLUNT Injury No. 1 ADV. NCCT HEAD NEURO SURGEON OPINION OR INJURY NO. 2 NEURO SURGEON OPINION OR INJURY NO. 3 ADV. X-RAY ORTHO OPINION and MLR NO. RS/DAT 6/2024, 25 dated 27.01.24 Total 4 injuries have been found to Ramkumar KUO BLUNT Injury No. 1 SURGEON OPINION or Injury No. 2 DENTAL OPINION Injury No.03 and 4 ORTHO OPINION on the basis of the application and on the contents of the MLRS offence under section 147/148/149/323/341/506 IPC, has been made to be found out and present FIR has been registered under section 147/148/149/323/341/506 IPC, at Tosham police station and. A copy of the FIR will be sent to higher officers and Area Magistrate. This case is being filed in the presence of SI Satyanarayan.'

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 there is unexplained delay of three days in registration of the instant FIR, moreso, no specific role has been attributed to him. He submits that nothing has been recovered from the petitioner and the injury which falls under the ambit of Section 307 has been attributed to the co-accused Sandeep and Umed who have already been arrested. He further submits that the only role attributed to him is that he has given stick blow to the injured Deepak. It is contended by him that after getting the normal check up



done of Devinder and Sandeep, they were discharged from the hospital even without follow up instructions. He has argued 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 17 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 3 months and 13 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in other FIRs i.e. FIR No. 406/2019 dated 25.08.2019 under Sections 323/341/147/148/506 IPC registered at P.S. Tosham, Bhiwani, FIR No. 173/2021, under Sections 180/294/452/506/341 IPC registered at P.S. Tosham Bhiwani and FIR No. 8/2024, under Sections 147/148/323/506/341/325 IPC, registered at P.S. Tosham Bhiwani, 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 31.08.2024 and charges stands framed on 10.10.2024.

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. 3 months and 13 days, no recovery is to be made from the petitioner, the



injury which falls under the ambit of Section 307 has been attributed to the co-accused who have already been arrested 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 31.08.2024 and charges stands framed on 10.10.2024, out of 17 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.

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

06.11.2024
anuradha

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No