

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214 CRM-M-54689-2024
DATE OF DECISION: 08.11.2024

AMANDEEP SINGH ALIAS BOBAN
...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Prabhjot Singh, Advocate for the petitioner.
Mr. Malkiat Singh, DAG Punjab.

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 Case FIR No. 69 Dated 02.03.2023 registered under Sections 302, 364, 201, 406, 420, 120-B IPC at Police Station City Kharar District SAS Nagar (Mohali).

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

‘Statement of Gagan Kumar Son of Paramjit Singh Resident of House No.-2213/55 C New Vijay Nagar Street No-3 Tajpur Road, Ludhiana, District Ludhiana aged about 26 years, stated that I am a resident of the aforesaid address and working in a private job at Ludhiana. My brother-in-law Rajinder Singh son of Hardev Singh Village Post Office Mahauli Khurd Police Station Sandour District Malerkotla (aged about 33-34 years) who used to work for car sales and exchange at Kharar who lived on rent at Sri Krishna Dairy Sante Majra Colony Kharar near Swaraj Nagar that on dated 18-2-2023 my brother-in-law came back from Gurgaon Haryana. With whom I spoke on the phone, who told me that I will come to



Ludhiana on Monday.
After that, from Sunday, my brother-in-law Rajinder Singh was nowhere to be found. whose mobile phone was also switched off. We kept looking for him on our own and on 23-2-2023 I also gave a missing report at the police station City Kharar. Then I came to know that my brother-in-law Rajinder Singh's bank account in HDFC, SBI has withdrawn about 2.5 lakh rupees from various places through ATM. That's why I applied at SBI Bank Branch Sandaur District Malerkotla for his account number-50100397745235. The statement was also obtained. From which it was found that on dated 24-2-2023, 5 thousand rupees of my brother-in-law Rajinder Singh through UPI PHONE NO - 77480-96921 has been transferred to the as last transaction from the account number-4694248162090. Then we checked on our own and found that it is in the name of Prabh alias Prabhjot Singh in account number- 4694248162090 from mobile number-77430-96921. Then alongwith Sukhveer Singh on your asking came to the police station Mor Kharar, then you showed me the notice of discovery of the dead body of an unknown person by police station Bassi Pathana and on seeing that notice of the dead body came to know that this picture belongs to my brother-in-law Rajinder Singh. Before this my brother-in-law Rajinder Singh through his acquaintance Hira Singh alias Deep son of Bhupinder Singh resident of Street No-2 Guru Nanak Colony near Udham Singh Chak Village Sangaria District Hanumangarh Rajasthan and other acquaintances Amandeep Singh alias Boban Son of Balwant Singh resident of village Hamirgarh Dhapai District Mansa, Prabhjot Singh alias Anshu son of Nirlep Singh resident of House no.-142 Mander Nagar Kharar District Mohali and Manjot Singh son of Sardul Singh resident of village. Morjand Sikhan District Hanumangarh Rajasthan was traveling in vehicle HR 26 AB 7878 mark Skoda. who lived together as they were mutual friends and Heera Singh alias Deep uses my brother-in-law Rajinder Singh's Alto car color white as a taxi. Hira Singh aka Deep had caused an accident due to which the car broke down and huge damage was done. The cost of which was 40 thousand rupees was paid by Hira Singh alias Deep. Therafter Hira Singh alias Deep used to demand that 40 thousand rupees from my brother-in-law. Thereafter Hira Singh alias Deep cleverly transferred 40 thousand rupees from my brother-in-law Rajinder Singh's account to his account through the



net. Because of which my brother-in-law Rajinder Singh had dispute with Hira Singh alias Deep and Hira Singh is having grudge against my brother-in-law. Now I was fully convinced that my brother-in-law Rajinder Singh was abducted and murdered by Hira Singh alias Deep, Amandeep Singh, Prabhjot Singh and Manjot Singh and his body was mutilated. Appropriate legal action should be taken against them. The written statement is correct after hearing and reading it. Sd/-Gagan Kumar Attested/-Sukhveer Singh, Attested/ Harjinder Singh SI/SHO Station House Officer, Police Station City Kharar, Dated 23-2-2023.'

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 and as per the allegations, the petitioner along with other co-accused has kidnapped and murdered brother-in-law of the complainant due to some money dispute. He submits that the charges have already been framed against the present petitioner and other co-accused on 04.01.2024 and the complainant namely Gagan Kumar has been examined by the prosecution and has turned hostile qua the present petitioner, therefore, there is strong probability of his earning acquittal. 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 37 Prosecution Witnesses, only 2 PWs have 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.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in serious allegations 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 30.05.2023 and charges stands framed on 04.01.2024.

4. **Analysis**

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration of 1 year, 7 months and 25 days, challan stands presented on 30.05.2023 and charges stands framed on 04.01.2024, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender added with the fact that complainant has turned hostile, hence there is every probability of earning acquittal, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt and out of 37 prosecution witnesses, only 2 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, 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

08.11.2024
Meenu

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