

2024:PHHC:145836



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54501-2024
DECIDED ON: 08.11.2024

YADWINDER SINGH @ LUDDAN
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Malkiat Singh, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 121, dated 08.08.2023, under Sections 307, 379-B(2), 411, 473 of IPC and Sections 25/27 of Arms Act, registered at Police Station Dakha, District Ludhiana Rural.

2. Facts

Facts as narrated in the FIR reads as under:-

“Statement of Rahul Rathore son of Satpal Rathore son of Kabrika Singh resident of Back side of Rythem Place, Mandi Mullanpur PS Dakha, Tehsil and District Ludhiana, aged about 23 years, Mobile no: 82831-59149, it is stated that I am resident of above mentioned

address and I started learning the work of denting-painting after passing my 10th class in year 2015-16. Now I have one workshop situated near Mini Holland, Mandi Mullanpur under the name and style of B.R Motors. Yesterday 07.08.2023 at about 4:40 PM I took my car make Swift bearing registration number PB-22H-9291 whose denting-painting work was pending to Car Bazar, Ayali Chowk, Ludhiana from my workshop and at about 5:20 PM I took my car from said Car Bazaar and was going to Mullanpur and on my way I took some smoking material (Cigarettes-Bidi etc.) from one Khokha Shop) situated on the left side of PTCE Badowal from Railway Crossing Badowal and I along with my friend namely Sagar @ Bhalu resident of Mandi Mullanpur in said car make Swift were smoking, meanwhile two young persons dressed as Nihang Sikhs came near our car and they were standing there and they got stopped us and asked that where are you going, on which I told them that we are going to Mullanpur. They told me that our motorcycle is out of fuel and kindly took us along with you. On which I took both the said Nihang Sikhs along in my car and we left from there. Meanwhile when we reached at main GT Road and turned towards Mullanpur City then one of the Nihang Sikh called to some person and told that our motorcycle is out of fuel, kindly refill the fuel and stand near PTCE Badowal and get me communicate with that Khokha (shop) owner and took motorcycle from there. Thereafter when my car reached in front of the Baba Zahir Bali Badhowal then the Nihang Sikh who was sitting on the back seat took out his pistol and pointed it towards the temple of my friends namely Sagar @ Bhalu. I stopped my vehicle, on which my friend namely Sagar @ Bhalu ran away towards backside after opening the door of the car and both the Nihang Sikhs present in the car told that get out from the car otherwise we will shoot you. I protested for the same then the Nihang Sikh sitting on the back seat of the car opened a fire shot of his pistol towards me and it hit on the bicep of my left arm and pierced through it and the other Nihang Sikh pulled me out from the car by opening the door and took me out from the car and both the said Nihang Sikh snatched my car make swift bearing registration number PB-22H-9291 and ran

away towards Mullanpur Mandi Side. There was flow of blood from my arm, due to which several passers-by got together at the spot and I took lift from some motorcycle rider and reached at my workshop at Mullanpur Dhaka, Where one Birbal took me to Civil Hospital Sudhar in his car make Creta. They referred me further to Civil Hospital Ludhiana and from there I was got admitted to Bhiwan Hospital, Kaccha Malk road, Jagraon by my father namely Satpal Rathore after arranging a vehicle. Here my treatment is going on. Kindly take required legal action against both the said unknown Nihang Sikhs. I have got recorded my statement to you, heard it as correct. SD/- Rahul verified by SD/- Satpal Rathore attested SD/ - Dharminder Singh ASI PS Dhaka dated 08.08.2023”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and no role whatsoever has been attributed to the petitioner, who was nominated on the basis of disclosure statement of another co-accused namely Sukhwinder. He further submits that as per the version narrated in the FIR only two Nihang Singhs have been named, who came close to the car and took lift and thereafter pointed out pistol towards temple of one sagar and finally succeeded in snatching the car in question.

It is also asserted on behalf of the petitioner that neither he was named in the FIR nor was present at the spot, but was taken subsequently on production warrant, as he was already in custody in another FIR bearing No.388 dated 09.08.2023.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that

the petitioner is a habitual offender, as he is involved in multiple cases. He further asserts that the gun shot was fired and there were unknown persons as well out of which one is the petitioner, but he could not refer to any material to corroborate and substantiate his argument from the FIR or from any other document.

4. **Analysis**

Be that as it may, considering the fact that the petitioner has already suffered incarceration of 1 year, 2 months, as is evident from the perusal of the custody certificate added with the fact that investigation is complete, challan stands presented on 05.02.2024, charges stands framed on 05.04.2024 and out of total 17 prosecution witnesses none has been examined so far, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 basic and 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 lend the petitioner in a situation of denial the concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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.

08.11.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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