



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54919-2024
DECIDED ON: 18.11.2024

RAM SINGH @ GOLI

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Kumar, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 528 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.534, dated 01.10.2023, under Sections 186, 332, 353, 379-B, 506 and 411 IPC read with Section 34 IPC, registered at Police Station City Fatehabad.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“That to SHO, P.S, Gurunanakpura (Fatehabad). It is requested that SPO Gamdur Singh no.90, Posted at P.S. Gurunanak Pura, Fatehabad. On the night of 30th September/01st October 2023, I and HGH Mukesh Kumar 1765 along with government motorcycle no.HR 220V-2504, area post Gurunanakpura Fatehabad, on night patrol investigation crime duty. At around 12.30

AM, both of us, reached Gurunanakpura Mohalla locality. Four young boys were standing in the street, two of whom had wooden sticks in their hands. We went near them and asked all four, what are you doing here at this time of night. On which one of the boys pushed me and the other boy hit me on the back of my leg. As soon as my friend Mukesh Kumar took the mobile from his pocket to call for police help, one of the boys hit Mukesh. He snatched the mobile from Mukesh's hand by hitting him with a stick on his left hand and said who are you to ask this and if you meet us here again, we will kill you and all four ran away from the spot. I personally inquired about the above four young boys, on which I came to know that among the young boys, Ram Singh alias Goli, son of Gurjit Singh, resident of Shakti Nagar, Fatehabad, Ajay, son of Jangir Singh, resident of Gurunanakpura Mohalla, Fatehabad, Sonu, son of Ashok, resident of Gurunanakpura Mohalla and one name is known along with them. An unknown young boy has committed this crime with us. Which I can recognize when I see them. I and Mukesh Kumar have presented our 2 MRs to you along with the application that legal action should be taken against the above four for snatching mobile phones, obstructing government duty and threatening to kill. Gamdur Singh Applicant SPO Gamdur Singh No. 90 Police Post Gurunanakpura Fatehabad. Mo. 80534-48722 Police action today on 01.10.2023 at Man HC May EHC Roshanlal No. 717 May Train Government No. HR-62-2771 whose driver is KRNL Makhan Singh. Patrol Inspector Juraim Ratia Chungi was present that SPO Gamdur Singh No. 90 and HGH Mukesh Kumar 1765 with rider no. HR 22GV-2504 Mind met HC and received the above request and two MLR No NY 344/FTB/2023 D1 01.10.2023 One injury in Gamdur Singh son of Harmel

Singh C/O Pain with bluish bruise of size for 4x2m present obliquely over posterior aspect Presented an injury C/o pain with swelling present over thumb of left hand no external injury mark seen and after receiving the MLR case under Section 332, 353, 506 and 379-B was registered.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner is on better footing than co-accused Subham Kumar as he has only caught hold of the complainant. He further contends that co-accused namely Ajay and Subham have already been granted the concession of regular bail by this Court vide orders dated 28.05.2024, 13.06.2024 passed in CRM-M-26128-2024 & CRM-M-27589-2024 respectively.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in eight more cases.

4. **Analysis**

Be that as it may, considering the total custody period i.e. 01 year and 22 days for which the petitioner has suffered incarceration; the petitioner is on better footing than co-accused Subham Kumar, who along with other co-accused Ajay have already been granted the concession of regular bail by this Court vide orders dated 13.06.2024 (Annexure P-4) & 28.05.2024 (Annexure P-3) respectively in addition to the fact that investigation is complete, challan stands presented to Court on 18.01.2024,

charges have been framed on 18.10.2024 and there are 15 prosecution witnesses cited, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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 land the petitioner in a situation of denial of concession of bail.

5. **DECISION:**

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

18.11.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No