

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-55910-2024
DATE OF DECISION: 14.11.2024

GONI @ SIVRAJ SINGH

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. H.S. Rakhra, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for the grant of Regular Bail to the Petitioner in FIR No. 76 dated 05.07.2024 under Section 341, 324, 148, 149 IPC (Section 326 IPC (118 (2) of BNSS and Section 201 IPC (238 of BNSS added later on) P.S. Majitha Amritsar (Annexure P- 1), keeping in view the peculiar facts and circumstances, in the interest of justice.

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

'Statement of Kanwaljit Singh son of Gursewak Singh resident of village Ludhar, P.S. Majitha, District Amritsar age 25 years mobile No. 86694-03415 states that I am resident of above said address. I was doing the work of welding. On 22.06.2024 at 10.30 AM I was coming back home after doing the work of Satnam Singh @ Sattu of our village when I reached near the water tank of village Ludhar then there Harman son of Laddu armed with datar, Goni son of Laddu armed with datar, Vishal Sharma armed with Kirpan, Jodha son of Flancha armed with datar and Laddu son of Balwant Singh armed with datar all residents of village Ludhar,



P.S. Majitha were already standing with their weapons. When I reached near than all the above said persons surrounded me and Harman gave a lalkara to catch hold. Today I should not go unhurt teach him (me) Hemant a lesson for quarrelling with us on which all of them attacked with their respective weapons upon me. Goni above said gave blow of datar with intention to kill me on my head I raised both my hands on my head, so the datar hit on my left wrist. Harman above said gave a blow of his datar with intention to kill me on my head and I raised my hands above my head and the datar hit on the little finger of the right hand. Jodha Singh above said gave two blows of datar on my right leg and blow the knee. Vishal Singh above said gave a blow of Kirpan twice on my right knee, Laddu above said gave a blow of his datar on the left knee, Vishal gave the blow of the dasti Kirpan below my left knee, Harman gave a blow of his datar on my right foot on the upper part. Harman gave the blow of datar below the right knee. Jodha gave two blows continuously on below my right knee. Goni gave the blow of the datar on the back side of my right hand. I raised rola of Mar Ditta Mar Ditta then on hearing my rola Teja Singh son of Narender Singh and Maggu son of Major Singh resident of Ludhar came on the spot on seeing them, all the persons fled with their respective weapons. The motive is that all the above said persons had earlier also quarrel with me regarding which I had given an application at Majitha Police Station. Regarding which the respectables had got the matter compromise with respect to the above said grudge all the above said persons has given me injuries with intention to kill me. Action be taken against them. The respectables have been trying for effecting a compromise between us it could not materialized. I have recorded my statement. Heard it. It is correct Sd/ Kanwaljit Singh.'

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 14 days in lodging the instant FIR. He submits that the petitioner was nominated in the present FIR only on account of grudge harbored by the complainant. He further submits that the petitioner has been attributed two simple injuries on the non-vital part of the body i.e. one injury on left wrist and second injury on the back side of the right hand. 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 19 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 22 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner was member of unlawful assembly and he inflicted two injuries on the person of the complainant with datar 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 16.10.2024 and charges are yet to be framed.

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 22 days, he has been attributed two simple injuries on the non-vital part of the body, there is unexplained delay of 14 days in



lodging the instant FIR and antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 16.10.2024 and charges are yet to be framed, out of 19 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.

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

14.11.2024
anuradha

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