

2024 PHHC 186003

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

215

CRM-M-56349-2024

DATE OF DECISION: 27.11.2024

GOURAV**...PETITIONER****Versus****STATE OF PUNJAB****... RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Veer Vikram Singh Mann, Advocate and
Mr. Bisman Mann, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)**1. Relief Sought**

The jurisdiction of this Court has been invoked under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the Petitioner in FIR No.0021 dated 09.02.2023 under Sections 326, 365, 34 379-B, 506, 201, 120 B and Section 25 of Arms Act, 1959 registered at Police Station Phase-I, District Mohali SAS Nagar.

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

‘Copy of statement, "Statement of Hardeep Singh S/o Darshan Singh R/o House No. 215. Near Gurdwara Sahib Dhoorkof, village Mohali, aged about 24 years, MNo.7717362093. Stated that I am resident of the above said address and I am doing the job of driver. On 08.02.2023 at about 2:15 PM, I was sitting near Rana Building, when two clean shaven persons came to me and the person wearing red T-shirt said to me that we have come from CIA Staff. There is a complaint against you, come with us. They were taking me towards their vehicle and another person of the name of Gauri S/o Dev Raj R/o Bad Majra was also standing ahead and as soon as we near the

vehicle Gauri started beating me and by getting me in the vehicle, took me via Dara Studio to the jungle behind the cremation ground of Bad Majra. They were having a data and one sixer arms (Ik Siksar Asla). Gauri with the help of his accomplices started threatening me with weapons and asked, who has killed my brother Bunty, tell us or we will kill you also. Or you hand over Ajay Patil and your friend to us. On my refusal Gauri and person in red T-shirt had caught hold my arms who placed my left hand on the ground and the person in black shirt gave two datar blows on my fingers, due to which all the four fingers got separated. Then the aforesaid persons ran away in their car by giving me threats and hurling abuses and I somehow reached my home. Maninder Singh son of my uncle got me admitted in Civil Hospital, Phase-6, Mohali for treatment. My mobile phone has also been taken away by the said persons in which my Sim No 9041406288 is working. After giving First Aid to me at Civil Hospital, Phase-6, Mohali, I was referred to PGI, CHD. I and Maninder Singh son of my uncle had gone for taking the fingers. After getting the fingers I got myself admitted in PGI, CHD., where I am under treatment. The motive is that Bunty brother of Gauri was murdered some time ago, due to which the aforesaid person Gauri along with his accomplices have done by conniving with each other. Kindly take requisite legal action against the aforesaid person and justice be imparted to me. You have got recorded my statement, heard, understood and admitted to be correct.'

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 as the complainant and the petitioner has previous enmity. As per the allegations, the petitioner and other co-accused persons impersonating CIA staff, abducted and threatened the complainant and cut off his fingers to extract information about the murder of petitioner's brother but no specific role has been attributed to him. He further submits that co-

accused namely Puneet Singh @ Harry @ Gola and Tarun have already been granted concession of bail by this Court vide orders dated 09.01.2024 and 04.09.2024 passed in CRM-M-64765-2023 and CRM-M-42221-2024 respectively. It is his further contention that nothing incriminating to be recovered from the present petitioner, therefore prays for grant of bail to the petitioner.

On behalf of the State and counsel for the complainant

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 1 year, 8 months and 20 days.

Learned State Counsel on instructions from the Investigating Officer and counsel for the complainant opposes the prayer for grant of regular bail stating that the petitioner is involved in other FIRs also, meaning thereby he is a habitual offender, moreover, he was part of unlawful assembly and had kidnapped and beaten up as well as chopped off four fingers of the complainant but is not in a position to controvert the submissions made by learned counsel for the petitioner.

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. 1 year, 8 months and 20 days, similarly situated co-accused have already been granted concession of bail by this Court, nothing incriminating to be recovered from the present petitioner 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 24.05.2023 charges stands framed on 29.01.2024 out of 28 prosecution witnesses, three PWs have given up and 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

27.11.2024
anuradha

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No