

2024:PHHC:148370



232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-55604-2024
DECIDED ON: 13.11.2024

AVTAR SINGH (@ AVTAR KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shakti Mehta, Advocate
for the petitioner.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court under Section 483 BNSS, 2023 seeking regular bail to the petitioner in case FIR No. 81, dated 09.07.2024, under Sections 420, 120-B IPC and Section 13 of Punjab Travel Professional Regulation Act, 2012, registered at Police Station Division 4, District Patiala.

2. *Facts*

The gravamen of the present case is that the present FIR was registered against the applicant and others on the application moved by the complainant Hardeep Singh s/o Balli Singh to the SSP Patiala. It has been submitted by the complainant that the accused Sultan Khan has introduced him with the accused Avtar Singh and Sahib Singh in the matter of sending him abroad i.e. Australia. Further, the accused Avtar Singh and Sahib Singh got introduced him with the

accused Kamaljit Singh and Palwinder Kaur, who had entered into agreement with him on 9.8.2022 at Jalandhar, for arranging tourist visa for him, for amount of Rs.12 lacs. On the same day i.e. 9.8.2022 amount of Rs.5 lacs was given in cash by him against executing of pronote as proof and he also transferred amount of Rs.1 lac and Rs.60000/- in the Punjab National Bank account of Palwinder Kaur, who had issued two cheques as security in his favour. The aforesaid persons took him to Thailand on 14.8.2022 and amount of Rs.1.5 lacs i.e. 18000 Australian dollars were given. The complainant had further stated that the cheque was presented by him in his bank i.e. State Bank of India, Patiala, but the same was dishonoured. He had demanded back his amount of tourist visa from the above named persons many times, but to no avail. The complainant has further prayed for taking action against the accused persons.

3. **Contentions**

On behalf of the petitioner:

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. It is further contended that no amount has been transferred in the account of the petitioner. It has been submitted on behalf of the petitioner that investigation in the present FIR is complete, challan stands presented to Court on 21.09.2024 and charges are yet to be framed. He has placed reliance upon the order dated 23.10.2024 passed by this Court in CRM-M-51185-2024 whereby, the co-accused of the petitioner namely Kamaljit Singh has been granted the concession of regular bail.

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 four more cases.

4. Analysis

Be that as it may, considering the custody period i.e. 3 months and 19 days for which the petitioner has suffered incarceration; investigation is complete, challan stands presented to Court on 21.09.2024, wherein 14 prosecution witnesses have been cited and charges are yet to be framed, 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.

(SANDEEP MOUDGIL)
JUDGE

13.11.2024
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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*