



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

246

CRM-M-56289-2024

DATE OF DECISION: 22.11.2024

FARUK ALIAS FARUQ

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Aiman J. Chishti, Advocate for the petitioner(s).
Mr. S.S. Pannu, Addl. A.G, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in FIR No. 10 dated 09.01.2020 under Sections 307, 420, 34 IPC, Sections 3, 5, 13, 17 of Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, Sections 25, 27, 54, 59 of Arms Act, 1959, Section 11 of the Prevention of Cruelty to Animals Act, 1960 registered at Police Station Sadar Hansi, Haryana.

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

‘To SHO, It is requested that I am Anil Kumar son of Ranbir Singh resident Jagdish Colony, caste Yadav. I am the President of Gau Raksha Dal Haryana Hisar District. Around four or five o'clock I was informed that two vehicles will come from Barwala side. One of them is RJ02GC-8342 and the other one is HR38N 0530. In which there are cattle. Which are being taken for cow slaughter. So I went towards Barwala road with my friends Deepanshu and Rakesh. From there we got on NH-9 and we saw two vehicles coming from there. So we signaled those vehicles to



stop and on seeing us, they increased the speed of their vehicles. So we tried to inform the police on number 100 but due to the network being busy, we could not inform the police. We were chasing the vehicles. The vehicles came to Hansi Road via Delhi Road and from there went on to Tosham Road. From Tosham Road those vehicles went to Putthi Mangal Khan Road. There were 2 vehicles ahead of us and we were behind them. Behind us was a vehicle which was Maruti Ertiga. The Canter drivers and the people in the Ertiga started firing at us. While the vehicles were moving, the tyre of the vehicle in front burst. Because of that the vehicle behind us also had to stop. We also stopped the vehicle, and the driver of the Ertiga vehicle coming behind us turned the vehicle back and fled. When we started going towards the vehicles from there, we saw people getting down from those vehicles and running away. We caught one of them. Who told his name as Dharamveer son of Gopi Ram, caste Bhat resident of Naya Gaon Rampura Hansi and told the name of his other companion as Munna and another person whose name and address I do not know and I do not know who was in the vehicle behind. Then after some time the police came and started searching the people who ran away in the fields and the person who was caught i.e. Dharamveer, had one pistol. We handed over Dharamveer and both the vehicles to the police. When the police checked both the vehicles, they found cattle filled inside them. The vehicle whose tyre burst, which was a canter, had 8 cattle in it, out of which 1 cow was dead. When the vehicle behind was checked with the help of the police, there were 12 cattle inside it. That vehicle was a closed container. They were taking the cattle in the vehicles for cow slaughter and fired at us with the intention of killing us. Please take the strictest action against them. SD/ Anil Arya 95418-99955 SD/- Rakesh SD/- DEEPANSHU 9992222672'

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 has not committed any offence as alleged in the present FIR. She submits that the petitioner has been nominated as an accused only on the basis of the disclosure statement made by co-accused and neither the petitioner was arrested from the spot nor any recovery has been effected from him. She points that the petitioner has been arrested in the instant FIR on 18.06.2024 i.e after four years of the registration. It is her contention that the main accused namely Dharmbir has already been granted concession of bail by this Court vide order dated 04.06.2020 passed in CRM-M-6921-2020 and co-accused Munna and Sokat have been granted concession of bail by Additional Sessions Judge, Hisar vide order dated 12.06.2020.

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 5 months and 4 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the stating that the petitioner is involved in other FIRs also, meaning thereby he is a habitual offender 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. 5 months and 4 days, neither the petitioner was arrested from the spot nor any recovery has been effected from him and he was nominated in the



present FIR only on the basis of disclosure statement made by co-accused moreso, similarly situated co-accused have already been granted concession of bail by this Court, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt and 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

22.11.2024
anuradha

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