



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

219

CRM-M-56385-2024
DATE OF DECISION: 28.11.2024

HARISH JHAMB

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Bhaskar Sarout, Advocate and
Ms. Savita Rana, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail for the petitioner in FIR No.279 dated 11.11.2022, under Sections 427/436 IPC, 1860 registered at Police Station New Colony, District Gurugram.

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

‘To, The SHO, New Colony, Gurugram, it is requested that I am Parmeshwar s/o Late Sh. Pyare Lal r/o 939/16, gali no. 1, Arjun Nagar, Gurugram. I am dealing in Sale Purchase of Old Furniture in a shop namely Yashika Old Furniture in a rented accommodation of # EP-15/16, New Basti, Gurugram. On dated 05.11.2022, I had organised a Jagran of Khatu Shyam Baba in Gali Number 1, Arjun Nagar. In the night hours, Harish @ Honey came there in drunken state, we asked him to go out, but, he didn't. Someone slapped him and sent him away out of the Jagran. Someone instigated him by saying that Parmeshwar has organised this Jagran and his men has beaten you and thrown you out of there. Due to this enimosity, Harish @ Hunny set ablaze my



Yashika Old Furniture shop ablaze in the night at 12 on dated 06.11.2022. My land lord informed me about it. The Fire Brigade and the Police had set off the fire by the time I reached my shop after getting information. I didn't get any suspicion at that time on anybody. Next day on dated 07.11.2022 at about 9 am one Rakesh Khatri r/o Madan Puri, street no.7 s/o Late DC told my son that Harish @ Hunny had set ablaze the shop. In the morning at about 6 am, he has admitted in front of me of setting afire the shop of Parmeshwar. Later I came to know about this and I enquired it at my level and cheked the CCTV footage from other shops and in the Street. After checking CCTV footage, I found out that Harish @ Hunny has set my shop on fire. I have lost the Old Furniture and Electronic items lying in my shop, the list of the same is as: 1. Ten sets of 5 seater sofas, 2. Four Single Beds, 3. Four sets of Wooden Almirah, 4. Two Inverter sets, 5. Eight PC Narmar TV, 6. Two plastic coolers, 7. Two sets of small Refrigerator, 8. 3 sets of Office Tables, 9. Two Double Beds, 10. Five PC Dressing Table, 11. Two ED PC, 12. Oven- Microwave-5, 13. Two Double Door Refrigerator, 14. Two Small Refrigerators, 15. Three Laptop Old, Eight piece CCTV Camera. The above said articles have burnt due to Fire and I have no bill of the same. I buy Old things to sell them. A car HR 26 DL 1010 WRV Honda, Maruti Celerio parked in the street also got damaged due to the Fire. Honda got damaged on the Right Side whereas the Celerio got damaged on the Left Side. Kindly take legal action against Harish @ Hunny. His full address is not known to me. Sd/- Prmeshwar 9891642042."

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 due to the grudge of the complainant against the present petition. He points out that there is unexplained delay of 5 days in lodging the FIR and as per the allegations, the petitioner put the shop on fire of the complainant



pouring petrol over the same whereas as per FSL report there are no traces of petrol found on the sample sent to it, therefore, no direct or indirect evidence is produced by the prosecution to connect the petitioner with the alleged offence, therefore, he prays for grant of regular bail to the petitioner.

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 1 year, 8 months and 6 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is involved in other FIRs of similar nature, 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. 1 year, 8 months and 6 days, no direct or indirect evidence is produced by the prosecution to connect the petitioner with the alleged offence 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 30.05.2023 charges stands framed on 23.08.2023 out of 24 prosecution witnesses, only two PWs have 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

28.11.2024
anuradha

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