

2024:PHHC:154331



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57211-2024 (O&M)
DECIDED ON: 22.11.2024

SHISHAN

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

Mr. Tarun Kumar, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

CRM-45451-2024

Application is allowed, as prayed for.

Annexures P-1 to P-6 are taken on record with just exceptions.

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked for the 2nd time seeking regular bail to the petitioner in FIR No. 89, dated 13.05.2024, under Sections 216, 307, 387, 506, 34 and 120-B of IPC, 1860 and Section 25 of Arms Act (Sections 216 of IPC and 25 of Arms Act added later on) registered at Police Station City Safidon, District Jind.

2. Facts

Facts as narrated in the FIR reads as under:-

“TO , The SHO, Police station, City Safidon. Subject: - Complaint against unknown people for demanding Extortion and on refusal of paying extortion, they fired upon my Partner namely Deepak, with intention to Kill at our shop. 1. That We have Mobile shop namely "7VK Communication" at Stadium market and my Shop No are 17 & 18 and in this shop I, Ankur Gupta Son of Ashok Gupta resident of Safidon presently residing in, Model Town, Virat Nagar Panipat, and I am partner with Deepak son of Rajender Prasad of Sadfion. 2. That I have received Whatsapp call Mobile Number 447309801064 on 30.3.2024 for extortion, on my Mobile No 9896244211, and I have taken this call lightly and no action was taken by me. But on next day i.e. 1.4.2024, I received the WhatsApp call from same mobile number and I blocked that number. That again on 3.4.2024, third time, I have received call from Mobile no. 37256187485, and again they demanded the extortion and they threatened me to face the dire and also threatened to kill us and even again we had this call. 3. That today i.e. 13.5.2024 around 5.35 PM, Deepak was standing outside and I was working inside the shop and then, I saw three unknown people coming on motorcycle with muffled faces and those people fired towards the Shop and Deepak escaped from the firing. Then firing, those unknown persons escaped towards new Bus Stand while waving their pistols in air. I have full Doubt that this attack was done by same persons who used to give threat from above mentioned Mobile numbers for Extortion on my mobile phone. That immediately after the incident I have informed the Police and police also came on the spot. Thus, it is humbly prayed before you Sir, that strict legal may kindly be taken against the unknown people and protect our life and property Sd/- Applicant Ankur Gupta son of Ashok Gupta, resident of Safidon presently residing in Model Town Virat Nagar, Panipat.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been implicated in the present case on the basis of disclosure statement suffered by co-

accused. He further submits that the petitioner is suffering from various ailments and required medical attention. It is contended on behalf of the petitioner that other co-accused persons have already been granted the concession of bail by the Court below.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that the petitioner has played an active role in connivance with his son as calls which were being made for extortion from abroad relates to the mobile number of the son of the petitioner.

At the outset, learned counsel appearing for the complainant submits that the petitioner has not played any active role in the commissioning of the offence, which derails the whole story of the prosecution itself at this stage.

4. **Analysis**

Considering the custody period already suffered by the petitioner i.e., 6 months and 6 days and not involved in any other case, as is evident from the perusal of the custody certificate and the stand of the complainant with regard to the role of the petitioner, this Court is of the firm view that there is strong probability of acquittal of petitioner on conclusion of the trial added with the fact that investigation is complete, challan stands presented on 15.07.2024, charges has not yet been framed and out of total 16 prosecution witnesses none has been examined so far, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in *Dataram Singh vs. State of Uttar Pradesh & Anr.*

2018(2) R.C.R. (Criminal) 131. 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.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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.

22.11.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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