



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56749-2024
DECIDED ON: 09.12.2024

MANGAL SINGH @ MANGA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Monita Mehta, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.195, dated 28.11.2021, under Sections 302, 450, 149 IPC, registered at Police Station Sadar Nakodar, District Jalandhar.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Statement of Sandeep Singh son of Gurdev Singh village Upal Jagir, P.S Noormahal, District Jalandhar, age about 34 years, Phone no. 98550-55184 stated that I am the resident of above mentioned address and work as a labourer. We are three brothers and sisters. The eldest sister is Kashmir Kaur and I am younger than this sister and the youngest brother is Mandeep Singh alias Nikku. My sister Kashmir Kaur is married to Mangal Singh

alias Manga of Village Chak Vendal, Police Station Sadar Nakodar, District Jalandhar for about 10 years. My younger brother Mandeep Singh alias Nikku lives separately with my mother Harbans Kaur and I live separately with my family. My sister Kashmir Kaur has a court case with her mother-in-law and father-in-law regarding the division of land. A few days ago, my sister's mother-in-law Joginder Kaur committed suicide by hanging herself. On which my brother-in-law's sisters Sukhjit Kaur wife of Sukhjinder Singh Village Hethiyan, District Kapurthala, Sarabjit Kaur wife of Sukhjit Singh village Muhem police station Mehatpur district Jalandhar and sister Rajdeep Kaur wife of Harbhajan Singh village Khanpur Dhada police station Sadar Nakodar district Jalandhar registered an FIR against my sister Kashmir Kaur, my brother-in-law Mangal Singh and my brother Mandeep Singh for forcing Joginder Kaur to commit suicide. Fearing that my brother, my brother-in-law and my sister ran away. That in the dark morning my brother-in-law Mangal Singh and my brother Mandeep Singh used to come to their well to feed their cattles and in the court case Dilbagh Singh alias Baga, Makhan Singh and Gurbaksh Singh residents of Chak Wendal used to help Joginder Kaur. On the evening of 27.11.2021, my brother- in-law Mangal Singh and my brother Mandeep Singh alias Nikku aged about 30 years, went to their weli to feed the cattle. According to my brother-in-law and mother, my brother-in-law after feeding the cattle and put one sack of fodder on the back of a motorcycle and left with the cow and asked my brother Mandeep Singh to bring the motorcycle. My brother-in-law was to leave the cow on the way. When my brother-in-law was going to leave the cow then my brother-in-law going towards the village Upal Jagir with

cow, at around 11:00 pm, my brother-in-law made many calls on my brother's phone, but my brother Mandeep Singh did not pick up the phone, so my brother-in-law called my mother at home and asked whether Mandeep Singh came home or not, then my brother-in-law also left the cow and came back to the village of Upal Jagir and then my mother, my sister and my brother-in-law started looking for my brother and when they looked at my sister's well at Village Chak Wadal then my brother was lying on the cot covered in blood. He had a deep injuries on his head with a sharp heavy weapon and a minor injuries on his right leg and stomach and my brother had died. On which my mother informed me about the death of my brother at around 2:00 AM in the morning then I along with my wife Paramjit Kaur reached at the spot. My brother died between 10:30 PM to 02.00 AM. We are suspicious that my brother-in-law's sisters Sukhjit kaur, Sarabjit Kaur, Rajdeep Kaur and Dilbag Singh @ Baga, Makhan Singhand Gurbaksh Singh were behind this murder.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner would *inter alia* contends that when the petitioner was arrested in FIR No.187 dated 10.11.2021, Police Station Sadar Nakodar on 06.07.2022 i.e. after six months of the occurrence in the present FIR which is dated 28.11.2021 bearing FIR No.195, he was nominated as an accused after obtaining his disclosure statement while in police custody. In that regard, reference has been made to the statement of PW-2-Sandeep Singh, whereby material contradictions have been pointed out raising debatable issue in the present case.

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 would rely upon the statement of PW-2-Sandeep Singh to assert that the disclosure itself states that he was in his house and Mangal Singh @ Manga, present petitioner, son of late Resham Singh, resident of Chak Vandal, Police Station Nakodar came to his house and told him that he had murdered his brother Mandeep Singh and now police suspects him. The head injury were given with sharp edged weapon and datar was recovered which was blood stained as has been pressed into by Mr. Rattu, to seek dismissal of the instant petition.

4. Analysis

Be that as it may, having regard to the fact that there is a delay which raises doubt about the involvement of the present petitioner that too merely on the basis of his own disclosure taken at the time when he was in custody in another FIR on 06.07.2022 bearing No.187, dated 10.11.2021. The statement of PW-2 Sandeep Singh depict that there have been various calls made by the present petitioner at that time to other family members inquiring about the deceased meaning thereby it cannot be a full proof case against the present petitioner until and unless trial is complete and witnesses will be examined.

Another aspect to be borne in mind by this Court is that charges were framed on 05.04.2023 and out of total 26 prosecution witnesses, three witnesses have been examined so far and the petitioner has already incarcerated 02 years, 04 months and 27 days in custody by now which is sufficient period for an accused who has not yet declared as convict.

The basic principle of criminal jurisprudence i.e. 'Bail is Rule' 'Jail is an exception' also cannot be ignored in such like cases where debatable issue has been raised and the final conclusion would be reached by the trial Court about the involvement of the petitioner in this peculiar circumstances and statement of witnesses so far examined including PW-2 Sandeep Singh which would take reasonable time and in that account, 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.”

This Court is sanguine of the fact that according to the proposition settled by the Apex Court in ***Rajinder Singh versus State of Haryana; 2022(2) RCR (Criminal) 85***, that keeping somebody behind the bars, till his guilt is proved, for an indefinite period amounts to infringement of his right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle “*bail is a rule*” and “*jail is an exception*”.

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 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.

09.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No