

2024:PHHC:154269



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57174-2024
DECIDED ON: 22.11.2024

MEWA SINGH
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Dishant Jindal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked for the 3rd time seeking regular bail to the petitioner in FIR No. 53, dated 29.02.2024, under Sections 307, 34 of IPC, 1860 (Section 326 of IPC added later on) registered at Police Station Sadar Mansa, District Mansa.

2. Facts

Facts as narrated in the FIR reads as under:-

“Copy of statement, "Statement of Gurpreet Singh alias Mangu S/o Bhola Singh R/o Khokhar Khurd aged about 27 years Mobile no 62390-94036 states that I am a resident of cited address. I am a labourer/wage worker. On date 19-02-2024 Mewa Singh S/o Kartar Singh R/o Khokhar Khurd called me from my house and took me by saying that we have to go to the house of Nirmal Singh. When we

entered the house of Nirmal Singh, it was around 7.45 p.m., Mewa Singh got aside and on the left side of the gate Nirmal Singh was there having musalla Daah of Iron. Just upon entering the gate, Nirmal Singh attacked me with daah of Iron then, I, for self defence, put forward my right hand then daah of Iron hit on my right hand wrist and then, when, I pushed him then Mewa Singh came forward with musalla sword and Mewa Singh with iron sword hit me 3 to 4 times continuously on my head with the intention of killing me and I fell down and while lying down Nirmal Singh hit me on my head with iron daah with the intention of killing me. I was shouting do not beat me, do not beat me. While I was lying down, Nirmal Singh hit iron dach three times on my right foot and then Mewa Singh hit sword 2 to 3 times on left foot. Then Nirmal Singh hit me inversely with iron daah on my right hand after which I became unconscious and then I don't know anything. Then my uncle's son Hardeep Singh got me admitted to Mansa Hospital upon which due to more injuries doctor sahib referred me to Patiala Rajindra Hospital. The reason behind the enimity was that during daytime, we three have consumed alcohol and at that time we had some altercation amongst and then I came back to my house and lied down and then this person Mewa Singh took me to house of Nirmal Singh with the intention of inflicting injuries upon me. Appropriate legal action be taken against Nirmal Singh S/o Mahinder Singh, Mewa Singh S/o Kartar Singh residents of Khokhar Khurd. Ours talks regarding compromise were going on till now. Statement has been written, heard and read. Ok. -Sd- Gurpreet Singh alias Mangu cited verified ASI Gurdarshan Singh 654/Mansa Police Station Sadar Mansa. Police action:- On 20-2-24 one rukka was received from Police Station City -1 Mansa. Mangu Singh S/o Bhola Singh R/o Khokhar Khurd is admitted in Civil Hospital Mansa due to injuries. Investigator be sent for action. Upon which I, ASI, being busy in government work, no action was taken upon. On 24-2-24, I, A.S.I along with my colleague collected rukka from City 1 Mansa and upon reaching CH Mansa, obtained written advice from Doctor Sahib regarding statements related to injured Mangu Singh S/o Bhola Singh R/o Khokhar Khurd. Doctor Sahib wrote that Victim Mangu Singh referred to Patiala Rajindra Hospital and the relative of injured Mangu Singh took him to his village Giri Buttar(Bathinda) after getting discharged from Patiala Rajindra Hospital. Today, I ASI along with S/CT Gurcharan Singh 1044/Mansa SCT Gurlal Singh 1320/Mansa were present at patrolling area village Khokhar Khurd, Khokhar Kalan, Sadda Singh Wala then at Bus Stand of Village Khokhar Khurd, Gurpreet Singh along with his uncle's son Hardeep Singh, whatever statement he make me, ASI, to write, were written and were read out, who after hearing and reading word by word put his signature in Punjabi below his statement. Which I had verified. 11 injuries to victim Mangu Singh have been recorded in Bed Head Ticket number 861 dated 19-2-24. That 9

injuries of sharp nature are kept for X-RAY Surgeon Opinion and two injuries are of blunt nature, kept for X-RAY Surgeon Opinion. From statements and from cited bed Head Ticket, prima facie offence 307, 34 IPC is inferred. After receiving X-RAY Surgeon Opinion, whatsoever will be the condition, required action will be taken. Statement against Nirmal Singh S/o. Mahinder Singh, Mewa Singh S/o. Kartar Singh residents of Khokhar Khurd, S/CT Gurlal Singh 1320/Mansa is being sent to Sadar Mansa police station for filing the statements by hand. After registering case, case number be informed. Special reports should be issued. PCR Mansa should be informed through wireless. I ASI go along with colleague witness at site of Khokhar Kalan and get engaged in investigation. Verified by ASI Gurdarsan Singh 654/Mansa Police Station Sadar Mansa. Today Khokhar Khurd AT:07-00PM, "Upon receiving statements case no. cited against Nirmal Singh son of Mahinder Singh, Mewa Singh son of Kartar Singh Residents of Khokhar Khurd cited, has been registered and written record is completed. The original case file as well original rukka is being sent by hand by S/CT Gurlal Singh 1320/Mansa to ASI Gurdarsan Singh 654/Mansa Police Station Sadar Mansa. Copies of F.I.R as Special Reports are being sent by hand by SCT Sandeep Singh 171/Mansa for Illaga Magistrate Sahib and other officers. Separate information is being given to PCR Mansa through e-mail."

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner contends that there is an unexplained delay of 10 days in lodging the instant FIR as the present FIR got registered on 29.02.2024 whereas the alleged occurrence took place on 19.02.2024. He has drawn attention of this Court to an order dated 28.08.2024 (Annexure P5) passed in CRM-M-34886-2024 vide which co-accused namely Nirmal Singh has already been granted the concession of regular bail.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He does not controvert the above-said fact rather submits that PW-1 i.e., complainant has resiled from his statement before the trial court during his examination in chief.

4. **Analysis**

Considering the custody period already suffered by the petitioner i.e., 8 months and 17 days and not involved in any other case, as is evident from the perusal of the custody certificate and the complainant before the trial Court turned hostile during his examination in chief, there is no question of causing the injury added with the fact that investigation is complete, challan stands presented on 23.05.2024, charges stands framed on 10.07.2024 and out of total 12 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.

(SANDEEP MOUDGIL)
JUDGE

22.11.2024

Meenu

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