



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

217

CRM-M-58264-2024

DATE OF DECISION: 27.11.2024

SAJEED

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kunal Dawar, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 BNSS, 2023 for grant of regular Bail to the petitioner in FIR No.162 dated 07.06.2023 under Sections 302, 34 IPC (Section 25, 25(8) of Arms Act added later on) registered at Police Station Dhauj, District Faridabad, Haryana.

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

‘Statement of Mohammad Yunus s/o Mahmood R/o Village Kureshipur aged 40 years Mobile No. 9306235682 stated that I am resident of above mentioned address and I am running a bakery in my village. I have five children, out of which four boys and one girl. Eldest son whose name is Mohammad Kaif is 21 years old and on dated 04.06.2023 my son Mohammad Kaif was married to Shama d/o Saddik r/o Village Dhirnaki police station Hathin District Palwal. During the marriage of my son Mohammad Kaif had a fight with a boy of our village boy namely Sakib regarding purchasing of some goods, but to



maintain peace in the marriage the matter was suppressed. But yesterday on 06.06.2023, I alongwith my son Mohammad Kaif were going to Jama Masjid for ISA ki Namaj and I had entered Masjid bu my son Mohammad Kaif was standing at the gate of masjid at that time Sakib, Sajid, Najmu and Jabir who were sitting in shop constructed near to the gate of masjid and while keeping a grudge over the issue of purchase of article Sakib, SAjid, Najmu and Jabir started beating Mohammad Kaif. In the meanwhile Sajid, Najmu and Jabir all together caught hold of my son Mohammad Kaif from his hand and legs and Sakib started giving injuries to my son on his chest, stomach and other part of his body using scissor kept in the shop due to which my son was bleeding badly and was shouting. In the meanwhile, my friend Arif s/o Yasin r/o Village Kureshipur while passing from the street heard the noise and went to the shop where he saw that Sakib, Sajid, Najmu & Jabir all together were beating my son upon which Arif got released Mohammad Kaif from the assailants and called me by shouting loudly to the shop. I went to the shop, Sakib, Sajid, Najmu Jabir ran away from there. I alongwith my friend Arif picked up my son Mohammmad Kaif and take him to BK Hospital Faridabad in ECO Car of Sharukh s/o Ash Mohammad, where Doctor after checking my son Mohammad Kaif declared him dead. The dead body of Mohammad Kaif has been kept in mortuary of BK Hospital for postmortem. It is requested that strict legal actions be taken against Sakib, Saijd, Najmu and Jabir i.e. killers of my son Mohammad Kaif. Statement got recorded, heard which is correct. There are more persons involved in this incident. Sd: YUNUS HIN ATTESTE SD: ANIL KUMAR SI ENG PS DHAUJ FBD DT 07.06.2023'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued the as per the allegations, the petitioner along with other co-accused namely



Najmu and Jabir had caught hold of the deceased while co-accused Sakid had given fatal injury to the deceased. He points out that above said two co-accused namely Najmu and Jabir who were named in the FIR and having been attributed same role as of the petitioner were declared innocent during investigation. He further points that even father of the complainant who appears as PW-12, Arif-eye-witness PW-13, Sharukh PW-11 who had taken the deceased in his vehicle to the hospital and Sahil and Nasir i.e. PW-9 and PW-10 respectively have not supported the case of the complainant. He has further argued that the antecedents of the petitioner are clean, therefore, 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, 5 months and 13 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that but is not in a position to controvert the submissions made by learned counsel for the petitioner, however submits that out of 21 PWs only 4 PWs are left to be examined, meaning thereby the trial is proceeding at good speed as 17 PWs have already been examined.

4. Analysis

Be that as it may, having regard to the custody period i.e. 1 year, 5 months and 13 days as well as the fact that the petitioner is not



involved in any other case, meaning thereby he is not a habitual offender, in the instant case 4 PWs have turned hostile therefore, strong probability of his acquittal cannot be denied 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.

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

27.11.2024
anuradha

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