



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

110

CRM-M-58091-2024
DATE OF DECISION: 11.12.2024

KRISHAN ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.K. Tripathi, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed 483 of Bhartiya Nagrik Suraksha Sanhita (BNSS), 2023 for grant of regular Bail in FIR No. 93 dated 23.03.2022 under Section 148, 149, 302, 307, 427, 452, 506, 212, 201, 120-B of IPC & Section 25 and 27 of Arms Act registered at Police Station Sadar Palwal District Palwal (Annexure P-1).

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

‘To, Incharge Police Post Dighaut, District Palwal. Sir, it is requested that I am Akash son of Rajesh, resident of Dighaut, District Palwal, we are two brothers, Yashbir is my elder brother, of our family members Surender son of Rajender, Govind son of Gangacharan, Yogesh alias Tinku son of Gugal, resident of Dighot and Anand, resident of Dakora, who seems to be Surender's brother- in-law and has been fighting with him for many years. Those who Surender etc. were holding a grudge against us regarding this matter, who had threatened us many times that if we got chance, we would destroy your family,



keeping the grudge on this matter. Surender, Govind, Anand, Tinku conspired to destroy our family, Tekchand resident of Khedi. Neeraj Pandit, resident of Faridpur, District Faridabad, Jagga resident of Chandhat, he is a villain type of man and is responsible for many murders and criminals of robbery and dacoity and they have made a name for themselves by committing crimes and together they gave money to destroy our family and Tekchand etc. took money from Surendra etc. to kill us. Kailash's brothers Pratap and Mahesh, resident Alawalpur dealer, resident Balai and along with him four unknown persons, yesterday on 22.03.2022 at around 12:00 noon, when I was standing at the wall of my uncle Dinesh's Nohra, that Kailash, Pratap, Mahesh, resident of Alawalpur, dealer resident of Balei and the names of four others. I don't know came to our house in Nohra, my brother Yashbir and Sonu son of Satbir, resident of Dighot, Sarfaraz son of Farooq resident of Dhirnki, Hathin Engineer, Jaiveer son of Karan Singh R/o Korali who was the contractor because were constructing a new house at Nohra had come to see him were Kailash, Pratap, Mahesh, the dealer and along with him four unknown names, all of whom had pistols in their hands and started firing from outside also. I immediately moved from the wall to the roof and everyone came, from front to back firing bullets and hearing the sound of the bullet, Yashbir closed the door from the other side, they all broke the door and started firing indiscriminately at my brothers Yashbic, Sonu, Sarfaraz and Jaiveer sitting inside. After firing for a long time, they started saying that if any one of you survives today, they will kill you, when Kailash etc. started firing indiscriminately again, my brother Yashbir got hit by several bullets and Sarfaraz and Tasveer were also shot, my mother Gayatri Devi alao came to the spot after hearing the sound of bullets, Kailash and others also fired bullets at my mother, she also narrowly escaped, after their departure Vikas son Taggar, Kishan's son Dayaram also came at the right time and with their help. I put Yashbir, Sarfaraz, Jaiveer in my car and first referred



Yashbir to Apex Hospital. Palwal, Doctor Saheb referred Yashbir to Sarvodaya Hospital, Faridabad. Leaving Sarfaraz and Jaiveer for treatment, brought Yashbir to the hospital from Sarvodaya Hospital. My brother Yashbir died during treatment, he died after being shot by Kailash, Pratap, Mahesh etc. who has killed my brother Yashbir by paying money to Tekchand. Neeraj, Jagga and hatching conspiracy by Surender, Gobind, Anand, Tinku, Kailash, Pratap, Mahesh, dealer and 4 unknown persons. Legal action be taken against them, this entire incident is recorded in our CCTV camera installed in Nohra Sd/- Akash son of Rajesh, resident of Village Dighaut, District Palwal 8053491830. Police Proceedings:- Today information was received through telephone that Yashbir son of Rajesh, resident of village Dighot is admitted in Sarvodaya Hospital Sector 8 Faridabad due to ballet injury, after receiving the information myself SI along with SPO Joginder No. 242 reached Police Station Sector 8 Faridabad, from where after getting slip from the Doctor, reached Sarvodaya Hospital Sector 8 Faridabad, from where MLR No. 2F200320221300, in which the Doctor has recorded 7 injuries. After obtaining MLR, SI obtained written opinion about injured Yashbir from Doctor, in which Doctor has mentioned that the injured was not capable of giving statement, after waiting there for a long time, Akash son of Rajesh, resident of village Dighot, district Palwal together presented an application, Keeping in view of the contents of the application submitted by injured and MLR, offence under Section 148, 149, 302, 307, 427, 452, 506, 120-8. of IPC and under Sections 25, 54 and 59 of Arms Act have been found to be made out. That statement is being send to the police station through 500 Joginder No. 242 for registration of FIR, after registration of case number of the same may be informed, in the case special reports may be prepared and sent for the kind perusal of senior officers, that myself SI am busy in Sarvodaya Hospital Faridabad, permission may be granted for investigation. Today at Sarvodaya Hospital Faridabad I/C



*Police Post Dighaut Police Station Sadar Palwal Dated
23.03.2022.'*

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 and perusal of the FIR shows that no case is made out against the petitioner. It is further submitted by him that the allegations leveled against the petitioner by the police is totally implanted and name of the petitioner has been added in this case on the confessional statement made by the main accused. He further submits that no recovery has been effected from the petitioner and he has been roped in the above said FIR only to fill up the lacuna by the police otherwise he was not accompanied with the main accused on that day of occurrence. It is further submission that co-accused namely Atul has already been granted regular bail by this Court vide order dated 30.08.2024 passed in CRM-M-40895-2024.

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, as per the same, the petitioner has already undergone for a period of 10 months and 8 days. He seeks dismissal of the instant petition on the ground that the petitioner is a habitual offender as he is involved in other FIRs also but is not in a position to dispute the fact that the co-accused person has been granted the concession of bail by this Court.

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. 10 months and 8 days, similarly situated co-accused has already been granted concession of bail by this Court, no recovery has been effected from the petitioner and the name of the petitioner has been added in this case on the confessional statement made by the main accused 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 20.04.2024 charges stands framed on 05.09.2024 out of total 58 prosecution witnesses, only 10 PWs have been examined as on 30.08.2024, 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

11.12.2024
anuradha

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