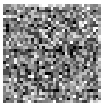


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2024:PHHC:158044



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58930-2024
DECIDED ON: 29.11.2024

RAMANDEEP KAUR ALIAS KAJAL
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Vir Singh Behl, Advocate
for the petitioner.

Mr. Rajiv Verma, 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.272, dated 30.09.2020, under Sections 364 (Sections 365, 370(4), 120-B IPC later on added vide DDR No.22, dated 19.10.2020), registered at Police Station City Malout, District Sri Muktsar Sahib.

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

“Statement of Kanta wife of Gopi son of Prakash resident of Musalmana Wali Gali, Ward No. 26, near Cremation Ground, Patel Nagar, Malout, aged about 25 years, mobile number 99151-49622. Stated that I am resident of

above said address and from the last 11 years I have been married with Gopi son of Prakash resident of Musalmana Wali Gali, Ward No. 26, near Cremation Ground, Patel Nagar, Malout and from this marriage I had four children's i.e. three three boys and one girl. Eldest one is boy namely Dinesh aged about 8 years and youngest to him is Ishwar aged about 6 year youngest to him is girl namely Akshara aged about three years and the youngest one is a boy namely Anand aged about 2 months. Today as usual my husband Gopi had gone to do labor work. I was present in my home along with my children's, my mother-in-law Rani and my sister-in-laws Sapana, Soman and Pooja. My mother-in-law and my sister in-laws were sitting inside room and were chatting and NDENT do SINGH lice I was sitting. outside on a cot along with my youngest son namely Anand and I was combing hair that at about 2.30 p.m. one unknown lady aged about 30 years who had worn black colored clothes came inside our house sat on cot and I can identify her if she comes present before me and I laid my younger son on the cot and went inside the room to keep the comb and when I came out and saw that my son Anand was not present on the cot. That unknown lady had taken away my son, I along with my sister in-laws and my mother-in-law raised "Raula" and till now we were searching for my son Anand but we could not trace him and that unknown lady had kidnapped my son with intention to kill. We were coming to inform you that you met us. I had recorded my statement. I had heard it is correct. So action should be taken. Sd. Kanta in Hindi language. Endorsed by Rani wife of Prakash resident of Musalmana Wali Gali, Patel Nagar, Malout. Verified by Karandeep Singh Station House Officer, Police Station City Malout dated 30.09.2020."

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has drawn attention of this Court to Annexures P-2 to P-4 i.e. statements of PW-1, PW-2 and PW-2 and submits that the material witnesses i.e. complainant, complainant's husband and complainant's mother-in-law all have not supported the case of the prosecution and have turned hostile. He further contends that the petitioner is not involved in any other case, meaning thereby, she is not a habitual offender.

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 seeks dismissal of the instant petition on the ground that the petitioner is the main accused, who had kidnapped the minor child of the complainant for the purpose of selling him.

4. **Analysis**

Be that as it may, considering the custody period i.e. 04 years, 01 month and 21 days for which the petitioner has already suffered incarceration and the fact that the material witnesses i.e. PW-1-complainant, PW-2-complainant's husband & PW-3-complainant's mother-in-law all have not supported the case of the prosecution and turned hostile meaning thereby there is every possibility of earning acquittal; she is not a habitual offender as she is not involved in any other case in addition to the fact that investigation is complete, challan stands presented to Court on 26.12.2020, charges having been framed on 09.04.2021, none of the prosecution

witnesses have been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which 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.”

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 her 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.

29.11.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No