

2024:PHHC:162012



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59743-2024
DECIDED ON: 04.12.2024

DEEPAK @ BUCHA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Chaudhary, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 202, dated 11.04.2022, under Section 302 of IPC, 1860 and Section 25 of Arms Act, 1959 registered at Police Station Ganaur, District Sonipat.

2. Facts

Facts as narrated in the FIR reads as under:-

“Brief facts of the case: Sir. the situation of the case is such that on 10.04.2022, information was received by phone from Control Room Sonipat that Satwanti W/O Naresh R/o Gandhi Nagar Ganaur is BROUGHT DEAD in GUN SHOT at Medical College Khanpur Kalan, take action, on receiving which information ASI Kuldeep Singh No. 1522/Sonipat, Outpost Incharge City Ganaur, Police Station Ganaur along with constable Jaswant 210/Sonipat reached Medical College

Khanpur Kalan where a BROUGHT DEAD Satwanti W/O Naresh R/o Gandhi Nagar Ganaur was found in the EMERGENCY, even after searching a lot around the EMERGENCY ward and the MORTURY, no heir of the deceased Satwanti was found present, which on 11.04.2022, the plaintiff Bhopal met the ASI and took him to the Medical College Khanpur near the mortuary. I have submitted an application in the Kalan whose content is "To SHO, Police Station Ganaur, Sir, I request that I am S/O Raj Singh, R/o village Khanpur Kalan, Bhopal and am posted as a driver in Medical College Khanpur Kalan. My real aunt Satwanti was married to Naresh, R/o village Purkhas, presently Agwanpur Road, Gandhi Nagar, Ganaur. My uncle Naresh Kumar has passed away many years ago. My aunt has 4 children, out of which 2 boys have already died, one boy is Deepak and the daughter is Ritu, both are married. My aunt's son Deepak is an unemployed vagabond type of boy. My aunt was posted as PEON in the Education Department in Narela, Delhi. Deepak used to quarrel with my aunt to use her salary for himself, about which we had earlier also explained to him not to quarrel. Yesterday, on 10/04/2022, late in the evening, I came to know that my aunt has been shot and she has been admitted to Medical College Khanpur Kalan for treatment. After getting the information, I reached Medical College Khanpur with my family members where my aunt was lying in a dying state. I have consulted my family and relatives and have been fully satisfied that my aunt Satwanti has been shot to death by her son Deepak to grab her salary and due to enmity over her legs. Strict legal action should be taken against him. Along with Deepak, some of his other accomplices may be involved in this incident, about whom the whole truth should be brought out by proper investigation. 8684003635 -SD Bhopal Singh who was found with the help of a letter of doctor and application for crime 302 IPC, 25-54-59 Arms Act. On receiving the complaint, the FIR was registered through CT Sonu 109 and case no. 202 dated 11.04.2022 section 302 IPC 25 Arms Act was registered at Police Station Ganaur and the investigation of the case was carried out by ASI Kuldeep Singh 1522/Sonipat. The postmortem of the dead body was conducted in Medical College Khanpur Kalan and the dead body was handed over to the relatives and the Palanda received from Doctor was taken into police custody as evidence. During the investigation, the scene of the incident was examined and a map of the scene of incident was prepared. The FSL team was asked to inspect the crime scene and after inspection of the crime scene and as per the instructions of the FSL team, one empty cartridge and one live cartridge were taken into police custody as evidence in the FIR. FIR was prepared. Photographs of the crime scene were taken with personal mobile. The vehicle was identified. The verification investigation regarding the case at the crime scene was carried out by me and the Light Officer of Ganaur Police Station. Further investigation of the case was carried out by

me. On 11-4-22, during the investigation, the accused Deepak @Bucha s/o Naresh R/o village Purkhas, presently Agwanpur Road Gandhi Nagar Gannaur, Sonipat, wanted in the case, was arrested as per law. On 12.04.2022, the accused Deepak @Bucha s/o Naresh was produced in the hon'ble court and taken on 1 day police remand. On 12-4-22, the FIR of the accused was recorded and the accused Deepak @Bucha s/o Naresh was made to identify the crime scene and the country-made pistol used in the crime along with two live rounds was recovered from the accused Deepak @Bucha s/o Naresh and was taken into police custody as evidence through the FIR. The sketch of the pistol and rounds was prepared and the map of the recovery at the scene was prepared. Statements were recorded by witnesses. After that, further investigation was again carried out by ASI Kuldeep Singh 1522/Sonipat. On 13-4-22, accused Deepak @Bucha was produced in court after completion of his legitimate police remand period and sent to jail in Panipat as per court orders. On 22-4-22, a map of the crime scene was prepared by the cartographer of police line Sonipat. Statement was recorded. On 27-4-22, the goods in the case were deposited in the forensic laboratory Madhuban for investigation/inspection. Statement witnesses were recorded. On 19-5-22, sanction orders were received from the honorable District Magistrate Sonipat regarding the illegal weapon and bullets recovered in the case. Complete investigation in the case has been completed. The accused Deepak @Bucha s/o Naresh R/o village Purkhas presently Agwanpur Road Gandhi Nagar Gannaur, Sonipat has been charged with evidence on challan. Challan under section 173 CrPC is being prepared against him and sent to the hon'ble court with witness testimony.”

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and the allegations levelled against him are absolutely false, vague and not supported by any cogent evidence. It is further submitted that the eye witness and complainant have turned hostile. He contends that the petitioner is a person of clean antecedents, as he is not involved in any other case.

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 fact that the complainant and eye witness turned hostile.

4. Analysis

Be that as it may, considering the admitted fact that eye witness and complainant have turned hostile and the petitioner has already suffered incarceration of 2 years, 7 months and 21 days and not involved in any other case, as is evident from the perusal of the custody certificate, meaning thereby he is a person of clean antecedents added with the fact that investigation is complete, challan stands presented on 30.05.2022, charges stands framed on 30.11.2022 and out of total 17 prosecution witnesses 11 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 Nimesh 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

04.12.2024

Meenu

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