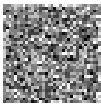


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2024:PHHC:158883



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58710-2024
DECIDED ON: 29.11.2024

SAHIB SINGH ALIAS NIKKA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shakti Mehta, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked for the second time under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.0081, dated 09.07.2024, under Sections 420, 120-B IPC and Section 13 of Punjab Travel Professional Regulation Act, 2012 (added later on) registered at Police Station Division No.4, District Patiala.

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

“One complaint No. 1658/0P71/ FR Dated 08.04.2024 on behalf of Hardeep Singh son of Balli Singh resident of Village Nansu, Tehsil and Distt. Patiala. To the respected SSP Sahib, Patiala. For registering the case under

Section 420/120 of IPC against Kamaljit Singh son of Shingara Singh R/o VPO Sheikhpura, Tehsil and Distt. Kapurthala, Sultan Khan son of Sabar Khan R/o Village Nansu, Tehsil and Distt. Patiala, Avtar Kumar son of Resham Chand resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, Sahib Singh son of Dev Ram resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, Munish Kumar agent Distt. Jalandhar received through registered post whose subject is as under: - To the SSP Sahib, Patiala complaint against 1. Kamaljit Singh son of Shingara Singh R/o VPO Sheikhpura, Tehsil and Distt. Kapurthala. (Mob. No. 89688-32063) 2. Palwinder Kaur wife of Kamaljit Singh R/o VPO Sheikhpura, Tehsil and Distt. Kapurthala, (Mob. No. .89688 - 32063), 3. Munish Kumar agent, Distt. Jalandhar (Mob. No. 89687- 47541), 4. Sultan Khan son of Sabar Khan (Mob. No. 98780-81829), 5. Avtar Singh son of Resham Chand resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, (Mob. No. 78145-35654) Agent, 6. Sahib Singh son of Dev Ram resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, (Mob. No. 98156 - 06731) for grabbing the amount of Rs. 12 Lacs for sending Australia on Tourist Visa. Sir, it is submitted that I, Hardeep Singh son of Balli Singh is the resident of Village Nansu, Tehsil and Distt. Patiala and submits as under: - 1. That I am resident of above mentioned address. I am peace loving and law abiding citizen and is working as an agriculturist. 2. That I want to inform you through this complaint that the person mentioned at SI. No. 4 in the subject introduced me to person No. 5, 6 for sending me to Australia. 3. That it is worth mentioning here that the persons No. 5 and 6 mentioned in the above said subject got introduced me persons No.1 and 2 and the person No. and 2 mentioned

in the above said subject got executed an agreement with me for arranging the Tourist Visa in sum of Rs. 12 Lacs in writing on 09.08.2022 at Jalandhar which was duly notarized. 4. It is submitted here that on 09.08.2022 I gave Rs. 5 Lacs in cash at Jalandhar and the Pronote was executed as a proof and Rs. 1 Lac and Rs. 60, 000/- was transferred in the account of person No.2 of Punjab National Bank bearing No. 3131000102057825 and the person No.2 issued two cheques bearing No. 486327 and 486328 of Punjab National Bank Branch Sheikhpura, Distt. Kapurthala as a security. 5. It is submitted that the above said person mentioned in the subject sent me to Thailand and on 14.08.2022 I gave Rs. 1,50, 000/- which comes to 1800 Dollar in Australia Currency. 6. That I presented the cheque in State Bank of India at Patiala and the same has been dishonored. 7. That I made so many calls to the above-mentioned persons in the subject for returning my money but which was taken for arranging the Tourist Visa but the above-mentioned persons did not reply me and above stated persons told me that you do whatever you want to do we will not bother. So therefore, by submitting present complainant you are humbly requested that action may kindly be taken against above stated persons and my money may kindly be returned to me and justice be given to me. Thanking you. Yours faithfully Sd/- Hardeep Singh S/o Sh. Balli Singh, R/o Village Nanansu, Tehsil and District Patiala, Mobile 90239- 25872 dated 09.08.2022.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has

been falsely implicated in the present case. It is further contended that no

amount has been transferred in the account of the petitioner. It has been submitted on behalf of the petitioner that investigation in the present FIR is complete, challan stands presented to Court on 21.09.2024 and charges are yet to be framed. He has placed reliance upon the order dated 23.10.2024 (Annexure P-5) and 13.11.2024 (Annexure P-6) passed by this Court in CRM-M-51185-2024 and CRM-M-55604-2024 respectively, whereby, the co-accused of the petitioner namely Kamaljit Singh and Avtar Singh @ Avtar Kumar have been granted the concession of regular bail.

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 a habitual offender as he is involved in one more case.

4. Analysis

Be that as it may, considering the custody period i.e. 04 months and 04 days for which the petitioner has suffered incarceration; the petitioner is not the beneficiary to the alleged transaction; co-accused namely Kamaljit Singh and Avtar Singh @ Avtar Kumar have been granted the concession of regular bail by this Court vide orders dated 23.10.2024 (Annexure P-5) and 13.11.2024 (Annexure P-6) passed by this Court in CRM-M-51185-2024 and CRM-M-55604-2024 respectively in addition to the fact that investigation is complete, challan stands presented to Court on 21.09.2024, wherein charges are yet to be framed and total 14 prosecution witnesses have been cited which is suffice for this Court to infer that the conclusion of

trial will take a 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.

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 concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his 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