



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59374-2024
DECIDED ON: 17.12.2024

KULDEEP SINGH ALIAS KODDA
.....PETITIONER

VERSUS

STATE OF PUNJAB
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S. Sidhu, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, 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.113, dated 07.07.2023, under Sections 364 and 34 IPC, registered at Police Station City Patti, District Tarn Taran.

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

“On dated 07.07.2023, ASI Naresh Kumar, Incharge, Police Post Kairon, Police Station City Patti, alongwith AS Rasal Singh 199, ASI Surjit Singh 1576, HC Harbhajan Singh 1576, HC Harbhajan Singh 1732, PHG Prabhjit Singh 3982, on government vehicle were present at Fatak Bazar Kairon for patrolling then Kulwant Singh s/o Mahinder Singh r/o Kairon came present with his daughter in law Sandeep Kaur wife of Gurpreet Singh resident of Kairon. Who got recorded his statement to SI Naresh Kumar. The subject of the is as following. it is

stated that I am resident of abovementioned address and doing the work of labour. I have two sons. My elder son is a truck driver and even now he has gone out of the state on a truck, he has four daughters and one son. On dated 07.07.2023, | alongwith my wife Harmeet Kaur and 8 month old grandson Karanpal Singh had gone to village Bhikhiwind on my motorcycle to my relatives house and my daughter in law Sandeep Kaur had gone to sow paddy crop. When we were returning back, my wife was sitting as pillion rider on the motorcycle and my grandson Karanpal was in her lap. When we were reached about ½ K.M away from village Kairon and time was about 3:30 PM, then one motorcycle with two persons with muffled faces snatched my grandson Karanpal aged about 8 months from my wife and my wife was also fell down from the motorcycle and suffered many injuries. I have apprehension that the persons who have snatched our grandson Karanpal, might kill him. Till now we are looking for him at our own, but he did not found. Kindly legal action be taken against the unidentified persons. S Naresh Kumar got recorded the above said statement which was read over to him, who after accepting it as correct, appended his thumb impression under the statement, which was attested by SI Naresh Kumar. From the contents of the statement, offences under section 364/34 IPC are found to be committed. Upon which, the statement was sent to police station by hand through PHG Prabhjit Singh 3982 for registration of FIR and Si Naresh Kumar after getting the FIR registered initiated the investigation and after reaching at the spot, inspected the spot and prepared the visual site plan and checked the footages of CCTV cameras, then during the investigation, complainant got recorded his supplementary statement before SI Naresh Kumar that complainant has corroborated the statement given by him previously that I and Sarabjit Singh Numberdar son of Tarlok Singh resident of Kairon, while searching the child, reached at Nikka Rayya where we kept on following the four persons who were having our child in their possession and we have identified them who were having motorcycle bearing number PB-32-R-3214 who had snatched our grandson from us and their names are Jagdish Singh @ Jagjit Singh @ Jagga son of Malkit Singh resident of Kahlwan and Karandeep Singh ® Karan son of Gurmukh Singh resident of near Baba

Bohar Shah village Kahlwan and their companions namely Jobanjit Singh son of Sarabjit Singh resident of Jodha Nagar now resident of Nikka Rayya District Amritsar Rural and Kuldeep Singh @ Kauda son of Nirmal Singh resident of Model Town Court Road Batala and we have seen our child in their possession and the child was wearing the same clothes which he was wearing at the time of occurrence and accused Jagjit Singh and Karandeep Singh were also wearing the same clothes which they were wearing on their motorcycle at the time of occurrence. These all four persons in connivance with each other abducted/kidnapped our grandson namely Karandeep Singh in order to kill him and these four persons be arrested and my grandson got recovered from them and legal action be taken against them. During the investigation on 08.07.2023, SI Naresh Kumar had nominated the accused namely Jagdish Singh @ Jagjit Singh son of Malkit Singh resident of Kahlwan Police Station Chola resident of Kahlwan, Karandeep Singh @ Karan son of Gurmukh Singh resident of Near Baba Bohar Shah village Kahlwan Police Station Chohla, Jobanjit Singh son of Sarabjit Singh resident of Jodha Nagar Police Station Tarsika District Amritsar Rural now resident of Nikka Rayya and Kuldeep Singh @ Kauda son of Nirmal Singh resident of street Krishan Mandir Wali Fatehabad now resident of Model Town Court Road Batala in the present case, vide Rapat no. 30 dated 08.07.2023 and the same day accused Jagdish Singh @ Jagjit Singh son of Malkit Singh resident of Kahlwan Police Station Chola resident of Kahlwan, Jobanjit Singh son of Sarabjit Singh resident of Jodha Nagar Police Station Tarsika District Amritsar Rural now resident of Nikka Rayya and Kuldeep Singh @ Kauda son of Nirmal Singh resident of street Krishan Mandir Wali Fatehabad now resident of Model Town Court Road Batala, were arrested and recovered the kidnapped/abducted child namely Karanpal Singh aged about 7-8 months from them and also recovered a motorcycle make Suzuki bearing number PB32R-3244 and the recovered child namely Karanpal Singh was handed over to his mother Sandeep Kaur wife of Gurpreet Singh resident of Kairon in the presence of Numberdar Sarabjit Singh son of Tarlok Singh resident of Kairon and his mother identified the child after getting the custody of the child and SI Naresh Kumar, after

investigation, reached at police station and confined the above said accused into the police lockup. The case property, as per the memo, was handed over to MHC Gurpreet Singh no: 406. On 09.07.2023, SI Naresh Kumar produced accused Jagdish Singh @ Jagjit Singh @ Jagga, Jobanjit Singh and Kuldeep Singh @ Kauda before the Hon'ble Court and obtained their 4 days police remand and confined them to police lockup at police station. On 10.07.2023, SI Naresh Kumar arrested nominated accused Karandeep Singh @ Karan son of Gurmukh Singh resident of Near Baba Bohar Shah Village Kahlwan Police Station Chola and confined into the police lockup at police station as per the code. On 11.07.2023, SI Naresh Kumar produced accused Karandeep Singh above said before the Hon'ble Court and obtained his 2 days police remand and confined him into police lock up of police station. And on 13.07.2023, SI Naresh Kumar produced Jagdish Singh @ Jagjit Singh son of Malkit Singh resident of Kahlwan Police Station Chola resident of Kahlwan, Jobanjit Singh son of Sarabjit Singh resident of Jodha Nagar Police Station Tarsika District Amritsar Rural now resident of Nikka Rayya, Kuldeep Singh @ Kauda son of Nirmal Singh resident of street Krishan Mandir Wali Fatehabad now resident of Model Town Court Road Batala and Karandeep Singh @ Karan son of Gurmukh Singh resident of Near Baba Bohar Shah village Kahlwan Police Station Chohla, before the Hon'ble Court and confined them into judicial custody. During the investigation in the present case, recovered motorcycie bearing number PB32R-3244 got verified. The investigation of the present case has been culminated and now no further investigation is pending in the present case. From the investigation conducted by SI Naresh Kumar and from the verified investigation conducted by me, from the statements of witnesses, interrogation, and from the evidence collected on the case file, sufficient evidence has been collected to submit challan under section 173 Cr.P.C. against accused Jagdish Singh @ Jagjit Singh son of Malkit Singh resident of Kahlwan Police Station Chohla resident of Kahlwan, Jobanjit Singh son of Sarabjit Singh resident of Jodha Nagar Police Station Tarsika District Amritsar Rural now resident of Nikka Rayya and Kuldeep Singh @ Kauda son of Nirmal Singh resident of street Krishan Mandir Wali

Fatehabad now resident of Model Town Court Road Batala and Karandeep Singh @ Karan son of Gurmukh Singh resident of Near Baba Bohar Shah Village Kahlwan Police Station Chohla Sahib and the Challan is being submitted before the Hon'ble Court. The witnesses may kindly be summoned through summons and trial may be initiated.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as neither he was named in the FIR nor was present at the spot of occurrence. He further contends that the petitioner was nominated as an accused on the basis of disclosure suffered by co-accused Jagdish Singh @ Jagjit Singh @ Jagga who already stands admitted on regular bail by this Court vide order dated 20.05.2024 (Annexure P-4) passed in CRM-M-24293-2024.

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. He seeks dismissal of the instant petition on the ground that the allegation against the petitioner are serious in nature as he along with other co-accused persons is alleged to have kidnapped one 8 months old boy. He further contends that the petitioner is involved in four other cases.

4. **Analysis**

Be that as it may, considering the custody period i.e. 01 year, 05 months and 03 days for which the petitioner has suffered incarceration; other co-accused persons namely Jagdish Singh @ Jagjit Singh @ Jagga, Jobanjit Singh, Karandeep Singh already stands enlarged on regular bail by this

Court vide Annexures P-4 to P-6 respectively in addition to the fact that investigation is complete, challan stands presented to Court on 22.08.2023, charges have been framed on 18.12.2023 and out of 13 prosecution witnesses only 03 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.

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.

17.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No