



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

233

CRM-M-59370-2024
DATE OF DECISION: 03.12.2024

SAIMIAL ALIAS SHUBHAM...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Kaushal, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in F.I.R Number 0048 (Annexure P-1) dated 04-03- 2024 registered at Police station Tanda with further addition of sections through General Diary No. 56, Rapat No. 28 dated 08-03-2024 and General Diary No. 26, Rapat No. 22 dated 09-03-2024 at Police Station Tanda, District Hoshiarpur, Punjab under Section 379B, 34, 411, 201 of IPC.

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

‘The statement given by Shri Balwant Rai, S/O Shri Meher Chand, Resident of Bagol Kalan, P.S. Tanda, District Hoshiarpur, aged about 43 years, Mobile 81468-18629 that I'm a resident of above given address and I am having Dump of building material outside the Village Bagol Kalan. I have kept Ramvir S/o Ghansi Ram R/o Nurpur, PS Dataganj, District Badaun (U.P.) as worker at my Dump. On 04.03.2024, I along with Ramvir was present at my Dump and at about 9.00 PM, I went on the back side of the Dump



to check the material. In the meantime, three persons came on one motorcycle at my Dump. Out of aforesaid three persons, two riders get off from the bike and they went to Ramvir and started scuffle with him. I rushed towards them. One person was armed with Datar and second person was empty handed. The person who was having Datar in his hand, by showing the fear of Datar, snatched the mobile phone Make OPPO of black colour having Sim No.79865-73967 from the hands of Ramvir and the second person took out Rs.9000/- from the left pocket of his pent and thereafter, all the aforesaid three persons fled away from the spot on their motorcycle. I identified the person who was empty handed with impression of Tatoo of "D.J." made on left side of his neck as I already knew him as a case was already registered against him for commission of similar offence. I disclosed his name as Hanook Masih @Tinku S/o Pargat Masih R/o Rapur, PS Tanda, District Hoshiarpur. I can identify the other two persons came with him, if they are produced before me. Regarding which on complaining by me, you officers accompanied by other officers visited at the spot of incident, the required action should be taken against above mentioned accused. I have recorded my statement, read it and heard it properly. SD/- Balwant Rai above action Police:- Today, I SI was present at P.S. that Munshi P.S. informed me that one call has been received that there has been happening of snatching at village Bagol Kalan so proper action needs to be taken by visiting on the spot of incident. Following which I SI along with ASI Narinder Singh 864, CT Sajan Kumar 1302, PC/PHG Jaswinder Singh 1246 by riding private vehicle reached at the spot of incident where Balwant Rai, S/o Meher Chand, R/o Village Bagol Kalan, P.S. Tanda, District Hoshiarpur has recorded his statement about the incident to me and I read out his statement for him after writing it and he signed in English below his written recorded statement which I checked. From the given statements the offence under 379-B, 34 of IPC is found to have happened. On which, the given statements be sent to P.S. with PC/PHG Jaswinder Singh 1246 to register the case. Case F.I.R number be checked after registering it. Information be passed to control room to prepare special



reports and to send them to Honorable Ilaqa Magistrate and Senior Officers. I SI along with officials investigate on spot. Today after registering the above F.I.R the original and copy of recorded written statements in hand PC/PHG is being sent for the investigation. Special reports to be prepared and being sent by hand to Honorable Ilaqa Magistrate and Senior Officers of ASI Sanjay Kumar 1363/HPR. Control room is being informed through email. F.I.R. number 46 dated 04-03-2024

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 the allegations against the petitioner and co-accused pertains to theft and snatching of mobile phone and Rs. 9000/- from the pocket of one Ramvir. He submits that the name of the petitioner was not mentioned in the FIR as it was registered against one Hanook Masih. He points out that the alleged motor cycle involved in the alleged crime was recovered from the possession of co-accused Ajay Kumar, moreover, co-accused namely Hanook Masih @ Tiku and Ajay Kumar @ Rajat have already been granted concession of bail by this Court vide orders dated 10.07.2024 and 16.07.2024 passed in CRM-M-31493-2024 and CRM-M-32522-2024 respectively. He asserts that the petitioner is not involved in any other case, meaning thereby, he is not a habitual offender.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 8 months and 21

days.



Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that offences of snatching are on the high rise and investigation is going on, therefore, the petitioner should not be released on bail, but is not in a position to controvert the submissions made by learned counsel for the petitioner.

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. 8 months and 21 days, the petitioner is not involved in any other case, meaning thereby he is not a habitual offender, similarly situated co-accused has already been granted concession of bail by this Court 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 06.06.2024 and charges are yet to be framed and there are total 12 prosecution witnesses, cited, 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 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 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 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

03.12.2024
anuradha

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