



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

240

CRM-M-59950-2024 (O&M)
DATE OF DECISION: 20.12.2024

UMED ALIAS DHOLIYA

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashwani Bhardwaj, Advocate for the petitioner(s).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of the BNSS for grant of Regular Bail to the petitioner in case bearing FIR No. 025 dated 29.01.2024 under Sections 147, 148, 149, 323, 341, 506 IPC, Registered at Police Station Tosham District Bhiwani, Haryana (later during investigation sections 325 and 307 of IPC are added on 14.03.2024).

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

'To the Incharge police post, Kair Sir, it is requested that I, Sandeep, son of Vikram Singh, resident of Village Kairu, District Bhiwani, on 26.04.24, 1 along with Devender son of Surendra and Suresh son of Bhanwar Singh, resident of Kairu, came to the village from our fields. We left Suresh at Mata Chowk and both I and Devender were going home on a motorcycle. When we reached in the street near Hanuman Temple Kairu at around 9:30 PM, we saw Sandeep alias Kalia son of Rajbir, Dholiya son of Krishna, Kuldeep son of Rajendra, Pradeep son Devi Lal met us in the street, Sandeep who stopped us and immediately hit our motorcycle No.



HR 48 D 5339 with an axe and started abusing us and started fighting with us. Kuldeep son Rajendra hit me with a Danda and Dholiya Son Krishna hit with Rod and Ankit alias Mana has beaten Devender with sticks, Devendra fell down, then everyone hit us, then Prahlad son Samuder and my nephew Anand came there, who freed us, then later when we came to know that Ramkumar son Harnam Singh resident of Kairu who came to street to stop our fight. Where Ramkumar was injured by Pradeep son of Devi Singh, Lalit son of Umed Singh, Ankit son of Prempal, Umed son of Krishna, Kuldeep son of Rajendra, Sandeep son of Rajbir, Manjeet son of Mahendra with sword, axe and stick, who have been got freed by Sanjay son of Rajendra resident of Kairu and later got Ramkumar admitted to the hospital by Dhansingh and his family members. About 15/20 minutes after our fight, he got injuries. Everyone have threatened us to kill. Legal action be taken on our application. Ramkumar is admitted in PG/ Rohtak who cannot speak due to severe injury on his mouth. We were discharged from the PGI after treatment and when Ramkumar regains consciousness and speaks, only then he can give the further information. Our application has been given to you applicant Sandeep son of Vikram Singh village Kairu Mo. No. 9728772870, Devendra son of Surendra Mo. No. 8053420901.'

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. He submits that there is delay of three days in lodging the FIR and no specific injury has been attributed to the petitioner. He further submits that no recovery is to be effected from the possession of the petitioner. He has further argued that the antecedents of the petitioner are clean, therefore, prays for grant of regular bail to the petitioner.

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 9 months.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular 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. 9 months, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, no recovery of weapon has been effected from the possession of the petitioner, there is delay of three days in lodging the FIR and no specific injury has been attributed to the petitioner 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 18.05.2024 charges stands framed on 10.10.2024 out of total 17 witnesses cited by the prosecution, none has been examined so far 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 *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 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

20.12.2024
anuradha

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