

2024:PHHC:162060



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

CRM-M-59871-2024
DATE OF DECISION: 04.12.2024

SUKHWINDER SINGH ALIAS SUKHA
...PETITIONER

Versus

STATE OF PUNJAB
... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Tejbir Singh Hundal, 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 B.N.S.S 2023 for grant of regular bail to the petitioner in FIR No. 53 dated 08.06.2024 under Sections 379-B, 341 and 506 of IPC and Section 25 of Arms Act registered at Police Station Badhi Kalan, District Moga (Annexure P-3).

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

“Statement of Jangir Singh S/o Budh Singh S/o Ratan Singh R/o Takhtupura District Moga aged about 60 Mob. No. 98146-51693 stated that I am resident of Village Takhtupura. I am doing business of selling vegetables in different villages. On dated 03.06.2024, I and my son Jaswant Singh on our tempo No. PB-10-BZ-1738, from our Village Takhtupura went for selling onions at around 05:00 in the morning we reached at Dharam Kanda before Badhani Kalan then suddenly one Alto Car topped ahead of us and stopped us. The Car was driven by Sikh man and on the back side one hindu boy was sitting who suddenly get out from the car and come towards us and out of them from side two young men come towards us and

the young man get down from the car removed silver color pistol from his custody and said to given us whatever you have otherwise he will shoot us. The young men come from side stand near by our both doors who told us to give them all the money otherwise they will shoot us. Then person possessing pistol put his pistol on my forehead and I being afraid gave them Rs. 7300/- from my pocket to the person having pistol. They after sitting in their car while threatening us fled towards Barnala side but turning. My son read the Tattoo made on the arm of the Sikh person driving the car. There is a tattoo of Khanda on the left biceps of this young men. One young men was having wound sign on the right bicep. My son read the number of the vehicle PB-10-FB-4851. Then we being afraid returned to our village Takhtupura and stated about the incident to Hardeep Singh S/o Amar Singh R/o Takhtupura to whom we took and started searching the accused on our own. We came to now from the description of accused and vehicle number that the driver of the car Sikh person Sukhwinder Singh alias Sukha S/o Kehar Singh R/o Killi Chahal on whose left arm tattoo namely Aman name has been inscribed and the person sitting on backside of the car Sanwinder Singh alias Sunny S/o Gurcharan Singh R/o Kachaa Dosanjh Road Moga who had wound mark on the biceps. Ramandeep Singh alias Sharry S/o Gurmel Singh R/o Pakka Dosanjh Road Moga on whose left shoulder there is a tattoo of Khanda and Gulab S/o Lallu Ram R/o Kacha Dosanjah Road Moga on whose right arm, Gulab was written in English and vehicle No. PB-10-FB-4851 was of grey color. These people after stopping us and our vehicle tempo while threatening us for life took away Rs. 7300/- from us. Today I along with my son Jaswant Singh was coming to you for informing at Police Station. You met us near Balvir Palace Badhani Kalan. Action be taken against accused. Statement has been got recorded to you, heard. LTI/- Jangir Singh above Verified Statement Sd/- Jaswant Singh S/o Jangir Singh R/o Takhtupura Verified Sd/- Pritam Singh ASI Police Station Badhani Kalan Dated 08.06.2024. Police Action: Today I SI along with SI Jagdev Singh 620/Moga, Sr. Constable Sandeep Singh 496/Moga, Constable Manjinder Singh 471/Moga in private vehicle for patrolling in search of bad elements were present at Balvir Palace Badhani Kalan then Jangir Singh S/o Budh Singh S/ Ratan Singh R/o Takhtupura District Moga along with his son Jaswant Singh came to me and got recorded their statement. Statement has been readover to them after recording who admitted his statement as correct and append his left thumb impression. The Same was verified by Jaswant Singh. Statement was verified by me ASI. From the statement an offence u/s 379-B, 341, 506 IPC 25-54-59 A Act has been found to be committed. Upon the recording of the statement, for registration

of the case, sent Constable Manjinder Singh 471/Moga to Police Station. After registration of the case, case number be intimated. Special reports be issued. PCR Moga be intimated. I ASI along with colleagues along with complainant of the case departed towards the spot of incident. Sd/- Pritam Singh ASI Police Station Badhani Kalan Dated 08.06.2024 today at jurisdiction near Balvir Palace Badhani Kalan AT 6:10 PM today at Police Station upon receipt of the above statement, above case under above offence registered CCTNS against above accused. Original Statement along with copy of FIR by hand CT for investigation sent to the spot. After issuing special reports by hand SCT Manjinder Singh 1377/Moga, sent to service of Duty Magistrate and Officers. PCR Moga is being intimated. Bandi Report No. 37 dated 08.06.2024 at 7:15 PM.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has falsely implicated in the present case. He further submits that there is a delay of 5 days in lodging the FIR, as the incident took place on 03.06.2024 and FIR was registered on 08.06.2024 for which no explanation is coming forth.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition stating that the petitioner is a habitual offender, as he is involved in other cases.

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. 5 months and 20 days, 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 06.08.2024 and charges stands framed on 28.11.2024, out of

total 12 prosecution witnesses, 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 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.

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 lend the petitioner in a situation of denial the concession of bail.

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

04.12.2024
Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>