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2024:PHHC:163935

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-M-60279-2024
DECIDED ON: 09.12.2024

LAKHVIR SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Luvinder Sofat, 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 for the third time under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in FIR No.85, dated 06.07.2018, under Sections 308, 325, 323, 201, 34 IPC, registered at Police Station Sadar Bathinda, District Bathinda.

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

“Statement of Gurpreet Singh son of Jagtar Singh caste Jatt Sikh r/o Buladwala, District Bathinda aged 22 years (9781000929), states that I am resident of above noted address and I am doing the work of agriculture, I alongwith Satpal Singh son of Sukhdev Singh r/o Buladewala, had gone our tractor 2511 on the back side of the water works at Kaluwala fields, Arniawali Patti, where in the fields Balwinder Singh son of Atma Singh

*armed with soti, Lakhvir Singh son of Balwinder Singh
armed with Kappa, Navjot Singh son of Lakhvir Singh
armed with soti of bamboo in which there was the pan
spade were standing in the fields, who had made a watt
in our fields about 6 marlas ahead and I told to
Balwinder Singh etc., that how have you put the Watt in
our fields, then on saying this, Navjot Singh above said
gave the blow of the soti of the kasia carried in his hand,
which hit on the head then Lakhvir Singh gave a fist blow
in my right eye which hit below the eye and Balwinder
Singh gave the blow of his dasti soti and when I raised
my arm to save myself then the soti hit on the right hand
palm and Balwinder Singh gave one more blow of soti
which hit on the left hand palm and I raised a raula of
marta-marta, then Sukhpal son of Sukhdev Singh r/o
Buladewala, came in front in order to save me and
Balwinder Singh, Lakhvir. Singh and Navjot Singh gave
injuries to Satpal Singh then Gurmeet Singh son of
Basant Singh and Jagtar Singh son of Sukhdev Singh
resident of Buladewala, gave a Lalakara and saved us,
then all three persons went alongwith their weapons on
their motorcycles and fled. This fight had taken place on
26.06.2018 at about 7.30 pm, the motive is that
Balwinder Singh etc, have forcibly put a Watt in our
fields and we have asked why they have put the watt in
our fields. Because of this in connivance with each other
gave injuries to me and Sukhpal Singh, then my father
Jagtar Singh made the arrangement of the vehicle and
got me admitted in the hospital, where doctors gave me
initial treatment and referred me then I was taken to
Neuro Hospital, Ramdev Road, Bathinda, where doctor
sahib are doing my treatment and Sukhpal Singh had
more injuries is still not well, I have got my statement
recorded, heard it, it is correct.”*

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that there is a delay of 10 days in lodging the instant FIR as the occurrence took place on 26.06.2018 and the instant FIR was registered on 06.07.2018. It has been further contended that as per the MLR, the complainant has received 4 injuries and only injury No.4 has been attributed to the present petitioner, which was caused by a fist blow, which does not attract the ingredients of Section 308 IPC. It has been contended on behalf of the petitioner.

On behalf of the State/complainant

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. Mr. Jasjit Singh Rattu, DAG, Punjab assisted by Mr. Virender Kumar, Advocate, who has filed Memorandum of Appearance on behalf of the complainant, seeks dismissal of the instant petition on the ground that the present petitioner along with other co-accused persons had inflicted injuries to the complainant with their respective weapons.

4. **Analysis**

Be that as it may, considering the custody period i.e. 07 months and 16 days for which the petitioner has suffered incarceration; the petitioner is not involved in any other case, meaning thereby, he is not a habitual offender as is evident from custody certificate; there is a delay of 10 days in lodging the instant FIR as the occurrence took place on 26.06.2018 and the instant FIR was registered on 06.07.2018 in addition to the fact that investigation is complete, challan stands presented to Court on 15.06.2024, charges are yet to be framed and total 21 prosecution witnesses are cited,

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.

Apart from above, the prosecution could not establish from the medico legal report, any injury which could be termed to be dangerous to life as there is a dispute qua the sole attribution to the present petitioner.

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.

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.

(SANDEEP MOUDGIL)
JUDGE

09.12.2024
Poonam Negi

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