

2024:PHHC:163654



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60654-2024
DECIDED ON: 09.12.2024

GURMEET SINGH
.....PETITIONER

VERSUS

STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raghav Sharma, Advocate for the petitioner.

Mr. Chetan Sharma, DAG Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court has been invoked for the 2nd time under Section 483 BNSS, 2023, seeking regular bail to the petitioner in case FIR No.0145 dated 22.07.2024, under Sections 318(4), 319, 336,(3), 338, 340, 62 of BNS, 2023 registered at Police Station Thanesar City, Kurukshetra.

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

“The succinctly submitting facts of the case are such that an order number 720 dated 20.07.2024 was received from the Hon'ble Court of Mrs. Aradhana Sahni, Session Judge, Kurukshetra, at Bajaria Dak Thana which is a jail To The Superintendent of Police, Kurukshetra. Sub Request to investigate the matter and lodge FIR. Sir. It is submitted. That a Sessions Case bearing No. 193/2023, arising out of FIR No. 197 dated 20.05.2023, u/s 436 IPC, P.S. Sadar Pehowa, registered against accused Hardev Singh,

son of Sardar Singh, resident of Dhoopsadi Plot, village Mohanpur. Pehowa. District Kurukshetra, is pending in the Court of learned Sessions Judge, Kurukshetra. Accused was enlarged on bail by the Court vide order dated 25.09.2023. In terms of the said order, Vimal Kumar, son of Shri Darshan Singh, resident of Ward No. 7, near Aman Palace, Kurukshetra and Om Parkash, son of Shri Ram Kala, resident of village Mathana, District Kurukshetra, had stood sureties for accused Hardev Singh and furnished surety bonds in the Court on 12.10.2023. Their photos were also clicked in the SIMS software provided by the Hon'ble High Court for maintaining record of sureties. It is further submitted that on 16.10.2023, accused Hardev absented from the proceedings. His bail was cancelled and nonailable warrants were ordered to be issued for securing his presence. In pursuance of notice issued by the Court, one surety Vimal appeared and penalty of Rs. 50,000/- u/s 446 Cr.P.C. was imposed upon him, which was deposited by him. Subsequently, vide order dated 20.05.2024, passed in CRM No. 16600-2024, Hon'ble High Court had reduced the penalty amount to Rs.25,000/-. Accordingly, amount of Rs.25,000/- was refunded to surety Vimal. However, notices/bailable warrants issued against other surety Om Parkash received back with the report that Om Parkash, son of Ram Kala, resident of village Mathana, District Kurukshetra has no concern with the case FIR No. 197/2023 and he had never stood surety in the case. On 16.07.2024, identifier Mala Ram, Nambardar appeared in the Court and suffered statement that infact Akash Rana. son Randhir Singh, resident of Kheri Markanda. District Kurukshetra had furnished surety bonds in the name of Om Parkash, son of Ram Kala, resident of Mathana, District Kurukshetra. After sometime, Mala Ram, Nambardar and above named Akash Rana along with ASI Mahender Pal executing official of warrants appeared in the Court. Shri Ajay Kumar, Advocate son of Shri Om Parkash, son of Shri Ram Kala also appeared in the Court and his statement was also recorded that his father had never stood surety in the present case for accused Hardev Singh. Vide separate order dated 16.07.2024, passed in the above said SC No. 193/2023, the Court has made following observations- It is. thus, clear that identifier Mala Ram, Nambardar in conspiracy with Akash Rana, son of Randhir Singh, resident of Kheri Markanda, District Kurukshetra cheated the Court and forged the documents and committed offence of impersonation. Copy of order dated 16.07.2024 passed in SC No. 193/2023 along with annexures mentioned therein is also enclosed. In view of the above, you are requested to get the matter investigated and lodge the FIR at the earliest. with intimation to the Court. ”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner is falsely implicated in the present case on the basis of disclosure statement of co-accused and recovery was effected from the possession of the present petitioner.

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

Considering the submissions made by the petitioner that no recovery is to be effected from the petitioner, who has already suffered incarceration i.e. 4 months and 1 day, 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 01.10.2024 and charges are yet to be framed and total 8 prosecution witnesses are to be examined, 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 stand allowed.

09.12.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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