



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

251 CRM-M-60734-2024
DATE OF DECISION: 09.12.2024

IRFAN ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sanyam Khetarpal, 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 BNSS (The Bharatiya Nagarik Suraksha Sanhita 2023) for grant of regular bail to the petitioner in FIR no. 195 (Annexure P-1) dated 11.09.2024 under Sections 384, 379-B, 120-B of Indian Penal Code 1860 and Sections 147, 149, 365, 506 of Indian Penal Code 1860 later added, registered at Police Station Dhauj, District Faridabad.

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

‘To the Commissioner of Police Sector-21C, Faridabad. subject: Application for taking legal action against accused Saniya daughter of Mubish resident of Lal Kothi, Near Medical Store Bochi and her other friends namely Saleem, Sallu @ Salman resident of village Fatehpur Kalan, Mubarik @ Kala and 4-5 unknown persons for taking of Rs. 1,50,000/- and demanding more money by putting a pressure to falsely involved in honey trap case. Sir, it is prayed that I, Arif son of Arshad resident of village

Kharkajalapur Tauru, Nuh Mewat and is a business of vehicles. I am married and have 5 children's i.e. 4 daughters and 1 boy and all children are small. On 16/17.02.2024 at about 7:00 PM, I received a telephonic call on my mobile number 9729161652 from the mobile number 8448252592, on which women was speaking. She asked whether Arshad was speaking, then I told that I am not Arshad and I am Arif. Thereafter, she told that her name is Saniya and I used to call a boy namely Arshad and thereafter she disconnected the call. Next day at around 2:30 PM, I received a call from the same number and she started talking with me sweetly and she asked me to come at Nuh but I refused. Thereafter, she told and asked me to come at Sohna, but I refused again. Thereafter, she told that she is going to the house of her Aunt's at Ballabhgarh. Saniya also told me that her marriage was fixed with Arshad and Arshad gave his mobile number to her. On which I told that he did not know the person namely Arshad and I gave warning her to not make any call again. Thereafter, on 23.02.2024 I again received a call from same number on my phone, she told that she had enquired that you are the son of her aunt and she is in litigation with her first husband as he used to beat her every day after consuming liquor. She wanted to get divorce from him and due to relation I was asked to save her as she had no one in that world. Thereafter, I refused her by stating that I have no solution and I advised her to take help of police, but Saniya kept calling me again and again and she kept on pleading me to save her from her husband. I believed her words and I came in her sweets talking. I told all those talking to my friend Kala and I convinced him to go to the Saniya's house to solve the issue. On 23.02.2024 at about 07:30 PMm I started to go Ballabhgarh with my friend Kala in his car. We reached Ballabhgarh at around 08:30 PM and Saniya kept on calling with me on phone, Saniya told that she was standing at a patrol pump near Dirty drain near Tewatia Farm House on Sohna Road. We went to patrol pump, where she was alone standing the stated place was ahead from patrol pump near a dirty drain. Soniya already stated me her identity on phone. That time, the time was 9:00 PM, Saniya asked us to take one more person from

village Nekpur, who was friend of my husband. On believing her words, we started towards Nekpur and when we were just before Nekpur, Saniya asked to stop the car and she after getting down from the car stated that first we should talk here that what points were told there. We along with her alighted from the car. As and when we alighted from car, Saniya caught me and she instigated me to develop sexual relationship with her. Thereafter, 5-6 boys came on two motorcycles and two boys were already present there. All those boys threatened me and made a demand of money and Rs. 11,000/- were taken from my pocket and made me sit in the car. Mubarik started to drive the car and Saniya sit on the motorcycle of those boys and they took me on the canal and where they made a video of mine along with Saniya and threatened me to implicate in a false case of rape and thereafter they demanded of Rs. 10 lacs otherwise I would be implicated in false rape case. Due to threat I become a fear and I agreed to give them 5 lac Rupees. Thereafter, my frie friend Kala @ Mubarik called his brother-in-law Salman @ Sallu. I called my younger brother Nasir and told that I was trapped and asked me to deposit money in my account. Thereafter my brother transfer amount from his mobile number 8396979042 to the phone pay number 9813517002 of Kala. Thereafter, I made a telephonic call to Thekedar Mubarik by asking that we apprehended and these persons are demanding 1 lac rupees to rescue us and Thekedar Mubarik transfer 15,000/- Rupees from the mobile number 9813566940 of his nephew Mufeed to the mobile number of Kala. Thereafter, Munfed transferred 50,000/- Rupees on my mobile number 9729161652. Thereafter, I transferred Rs. 50,000/- on mobile number 8448252592 of Saleem came with those persons along with Saniya. Thereafter, Rs. 70,000/- and 20,000/- were transferred by Kala on these mobile numbers. Thereafter we were released by those persons on the assurance on Salman @ Sallu to pay remaining amount to those persons. Thereafter, the telephonic call from the mobile number 9599214027 was received on my mobile number 9729161652 for remaining amount and the videos were also sent on my mobile with a threat that if 20,000/- Rs. are not deposited, then the video would be viral to involve me

in the false case. I stated that I gave consent in positive. Thereafter I started to say that I would file a court case upon them, then they disconnected the telephonic call. I was in a mentally pressure and due to fear of owner in the society I gave Rs. 1,50,000/- to Kala. Thereafter, I went to my relative to arrange the money to fulfill their demand, where I came to know that Saniya was a professional woman and other persons is involved with her. Saniya was leaving with Saleem at Fatehpur Tagga and she used to trap the people in her love by calling them on phone. Then according her plan she used to take them to some place and used to make a physical relation with them and after that by showing the fear of getting implicated in the rape case she used to extort money from them. There are many persons in this gang including one Advocate. Saniya had already got registered many cases i.e. FIR No. 729/2023 u/s 376, 506, 34 IPC at police station Mujesar Faridabad and FIR No. 46/2022 u/s 376, 450, 328 if IPC at Women Police Station NIT Faridabad, FIR No. 396/2020 u/s 376 IPC at Police Station Court Kashim Rajasthan and FIR No. 72/2022 at police Station Jahangeerpur Bulandsehar UP. Saniya registered some more cases like these types. I came to know later that Kala was my friend is involved with the gang and Kala gave my mobile number to Saniya in connivance with her. Saniya has many these types gang. The person, who become ready to give money, would not be implicated by her and the persons who did not give money, would be falsely involved in the cases and after taking money she used to turned hostile. Saniya and her friends put a pressure in a rape case and grabbed money of Rs. 15,000/- from me in their accounts. The legal action against them may kindly be taken and justice should be taken. Sd/- Arif, Mobile No. 9729161652 dated 19.03.2024."

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 in collusion with the complainant. He submits that the petitioner was even not named in

the instant FIR and was named only on the basis of disclosure statement made by one co-accused and there is unexplained delay of 7 months in lodging the FIR. He further submits that no recovery has been effected from the petitioner. He points out that two co-accused namely Nabbar Khan and Gourav Tyagi have already been granted concession of anticipatory bail vide orders dated 18.11.2024 and 21.11.2024 passed CRM-M-57131-2024 and CRM-M-57945-2024 respectively.

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 2 months and 23 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender, as he is involved in other cases also.

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. 2 months and 23 days, similarly situated co-accused have already been granted concession of anticipatory bail by this Court, nothing has been recovered from 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 12.11.2024 and charges are yet to be framed, and total 23 prosecution witnesses are 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 *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 land the petitioner in a situation of denial of 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

09.12.2024
Meenu

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