

2024:PHHC:168611



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107

CRM-M-61796-2024

DATE OF DECISION: 17.12.2024

KAMLESH

...PETITIONER

Versus

STATE OF U.T., CHANDIGARH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shubham Dogra, Advocate for the petitioner(s).

Mr. Sumit Jain, Addl. P.P., UT, Chandigarh.

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. 129 dated 18.10.2022 under Sections 365, 34 of IPC, 1860 and Sections 120-B, 302, 201 of IPC added later on registered at Police Station Mauli Jagran, Chandigarh (Annexure P-1).

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

“ Statement of Ranjay Kumar S/o Basant Paswan, village Karsav, PS Karsav, District Aurangabad (Bihar) Age 26 yrs. Stated that I am residing at above mentioned address along with my family and I work as Driver at Moga Punjab. We are two brothers and three sisters. That my younger brother Dhananjay aged about 23 years was living in Chandigarh from last 4-5

years and he used to work on lathe Machine at Industrial Area and my brother Dhananjay used to talk to his mother and my wife on the phone at home and asked about their well being. My wife used to tell me about Dhanajay's phone call. That on 06.10.2022 one boy named Ram Singh called from M-8968069410 on my wife Sunita Devi phone no. M- 9060976422. Who inquired about Dhananjay arrival and whether he has reached home or not. My wife told that Dhanajay did not come home and then my wife told about the call that this boy is asking about Dhanajay. Then I took the phone number from my wife's phone and I spoke on phone no. 8968069410 from my phone number 9801123437. A person named Ram Singh spoke on this phone and told that your brother is missing from so many days. You should go and meet a lady named Shalu in this regard. She will tell you the whole thing. Ram Singh gave me Shalu's phone number 9988366506 I spoke to Shalu from my phone. Shalu told me that this cannot be discussed over the phone. She told me to come Chandigarh, I left my village Karsav Nighar and reached Chandigarh railway station where I spoke to Shalu over the phone. Then Shalu met me at Chandigarh railway station. Shalu told me about the incident that happened with my brother Dhananjay and her, that I was married to Nempal and I have four children and we lived in House no.19, Village Mauli and my husband used to drink alcohol often and was addicted to alcohol and after drinking alcohol he used to beat Shal and did not even give money for the household expenses. And during this period a boy named Dhananjay lived in the adjacent room and Shalu started talking to that boy and first she started talking about her household matters, he also gave me money and helped me and we fall I love with each other and are meetings continued and one day we both left from here and went to Rajasthan Jaipur and during this time I became pregnant and our expenses ended and Dhanajay told me that his PF is deposited in Chandigarh. We will go and withdraw it. Then we both came to Chandigarh and started living in a room in village Budhanpur and after 2-3 days

Dhananjay went to Zirakpur in the afternoon for some work and did not return till evening and I called Dhananjay again but the phone was switched off. Next day morning at about 07:00 AM I got a call from my mother Kamlesh on my phone then my mother told me that Nempal has come to my room with a boy Dhanajay. You came and talk to him. They had an arguments and fight and then Nempal called his 3-4 friends and in sometime 3-4 boys came and took Dhanajay in an auto. Then when I asked Nempal about Dhanajay he told me that I made him understood and put him on the train and my husband told me to come with him. I refused my husband. During this time I kept calling Dhanajay on his phone. But Dhanajay's phone remained switched off. This incident is of Thrusday, 29.10.2022. Regarding which I have reported him missing at the police Mauli Jagran on 07.10.2022. I suspect that my brother Dhanajay has been beaten up and made to disappear by Nempal along-with his 3-4 friends. I myself have searched alot for my brother Dhanajay but not have found him yet. My brother Dhanajay should be searched and legal actions should be taken against Nempal and his 3-4 companions and this matter should be investigated thoroughly and my brother Dhanajy should be traced that where has Nempal taken Dhananjay with him 3-4 companion. State has been recorded, heard and correct.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case and the only role attributed to her is that her son-in-law and the deceased went to her house in the night prior to the incident. He further submits that the antecedents of the petitioner are clean, as she is not involved in any other case.

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 on the ground that the allegations against the petitioner is of serious nature.

4. Analysis

Be that as it may, considering the fact that there is no direct material evidence available with the prosecution to connect the present petitioner with the commissioning offence; the petitioner has already suffered sufficient incarceration i.e. 2 years, 1 month and 22 days and is not involved in any other case, as is evident from the perusal of the custody certificate 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, charges stands framed on 16.05.2023 and out of total 37 prosecution witnesses, only 3 have been 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.

5. Decision:

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on her 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

17.12.2024
Meenu

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