

2024:PHHC:171926



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-4115-2024
DECIDED ON: 20.12.2024

ARSHDEEP SINGH ALIAS MUNNA

.....APPELLANT

VERSUS

STATE OF PUNJAB AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Premjit Singh Hundal, Advocate
for the appellant.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The present appeal has been directed against the judgment dated 03.10.2024 vide which bail application of the appellant was dismissed in FIR No.20 dated 12.02.2024, under Sections 307, 324, 148, 149 of IPC and Sections 3, 4 of SC & ST Act, 1989, registered at Police Station Division No.2, District Pathankot, Punjab

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

“Statement of Jyoti Lal son of Mahipal resident of Gandhi Mohala Near Kali Mata, Mandir, Pathankot Police Station Division No.2 Pathankot aged about 42 years, Mobile No. 9646584181. Stated that I am resident of above, mentioned address and is doing practice in the District Court

Pathankot and apart from this I am a social worker. My son Aditya whose age is about 19 years and is a student. On 11.02.2024 I was present in my house at about 03:00PM after asking from me my son Aditya went along with some friends to attend a party in some restaurant near Simbal chowk. A about 05:50PM my son called me who told me that Munna resident of AB College Pathankot, Prince @ Dodi resident of Uchi Pulli Pathankot, Gautam @ Nikku and 5-6 unidentified person along with them who were having sharp edge weapons are trying to kill me. That I without causing any delay reached immediately near symbol chowk then I saw that Munna, Prince@ Doddi, Gautam @ Doddi above and 5-6 unidentified boys along with them to whom I can Identify once came Infront of me have encircled my son Aditya and with the intention to kill my son were giving blows with their sharp edge weapons at his head, hands, legs and on the other parts of the body. Then my son to save his head was raising his hands due to which his left thumb has been chopped off by the accused persons and fell down and his all fingers of right hand was also suffered incised wounds and blows with sharp edge weapons has also been caused on rest of his body and Munna, Prince @ Doddi, Gautam Nikku above were calling caste based names to my son infront of me and other many people and were saying that this dog Churra-Chamar has to be killed today, they have become a lig social worker and they were insulting my son after giving beatings. Earlier also Munna etc. were chasing my son and were trying to kill him. That I and my son raised Hue and cry at the spot then above accuse flew away from the spot with their respective weapons that after arranging the vehicle I took my son to the Civil Hospital Pathankot where Doctor gave first aid to my son and issued MLR, which I will present later on before you and referred my son to Amritsar. that my son at this time is under treatment at Amandeep Hospital, Amritsar

and his condition is very serious. That I belong to Scheduled Caste and Munna etc. belongs to the General Caste and we being a schedule caste person they earlier also harassed my son Aditya. Is the claimant, legal action be taken. SD/- Jyoti Lal Above signature in English, Attested Harjinder Singh ASI, Police Station Mamoon Kot Dated 12.02.2024. Police Proceedings: - Today I ASI was present at Police Station that MHC Police Station has told that some fight has been taken place between some boys at roadside after party held at some hotel near Simbal Chowk, reach at the spot. That I ASI along with HC Satpal Singh No. 1373/PTK, PHG Darshan Kumar No.1032PHG, Pankaj Chaudhary No.12971 by riding on private vehicles reached at Simbal Chowk Pathankot. That after reaching at spot it has been learnt that someone has got injured in this fight, he has got been admitted in Civil Hospital Pathankot, and accused persons have flown away from the spot. On which I ASI along with accompanying employees reached at Civil Hospital Pathankot and obtained the written consent from the Doctor whether injured Aditya is fit or unfit for giving the statement, the Doctor has replied in written that injured has been referred to Amritsar for further treatment. That I AST along with accompanying employees reached at Aman Hospital Amritsar where a written request has been presented to the doctor whether injured is fit for giving statement or not. That the Doctor has replied as injured is unfit for giving the statement and injured is in operation theater. On which father of the injured who was found present at the Hospital has got recorded his above statement. His statement has been read over to him who found his statement as correct put his signatures under the statement in English and I ASI attested the same. That perusal from the statement offence punishable under section 307,324, 148, 149 IPC, 3/4 SC/ST Act are found. For the registration of the case statement is being sent by hand

though PHG Darshan Kumar No.1032 to the Police Station Division No.2 Pathankot. Case be registered and number be informed. Control Room be informed through wireless. After preparation of special reports, the same be sent to Illaga Magistrate and Senior Officers for their kind perusal. On Receipt of MLR of the injured whatever the outcome of injuries, appropriate actions would be carried out. That perusal from the statement offence punishable under SC/ST Act is also found, the investigation of which has to be carried out by some Gazatted Police Officer. That further investigation of the case is being handed over to Gazatted Police Officer”

3. Contentions

On behalf of the appellant

Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case and the injuries attributed to him are simple in nature. He further submits that the appellant is in custody since 06.09.2024 and not involved in any other case.

On behalf of the State

Learned State counsel has filed the custody certificate of the appellant, which is taken on record. He does not oppose to the submissions made by learned counsel for the appellant, though on instructions from ASI Pawan Kumar submits that the injuries attributed to the appellant are simple in nature.

Mr. Viren Sibbal, Advocate has put in appearance on behalf of respondent No.2 and filed his memorandum of appearance. He prays for dismissal of the present appeal stating that the complainant is young boy of 19 years age and has lost his one finger and therefore, the case of the prosecution is supporting the petition being hand-in-glove.

4. Analysis

Considering the submissions made by learned counsel for the appellant that the appellant has already suffered sufficient incarceration i.e. 3 months and 12 days, who is not involved in any other meaning thereby he is a person of clean antecedents added with the fact that the injuries attributed to him are simple in nature and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt.

As far as the contention of respondents No.2 is concerned, investigation is complete, challan stands presented on 18.10.2024, charges are yet to be framed and total 27 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 appellant 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 appellant 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

20.12.2024

Meenu

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