

2024:PHHC:171891



209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63372-2024
DECIDED ON: 20.12.2024

AMIT @ SANDY

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Baljeet Nain, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 (erstwhile Section 439 Cr.P.C.), seeking regular bail to the petitioner in case FIR No.306 dated 29.10.2023, under Sections 395, 397, 412, 120-B of IPC, 1860 and Sections 25 and 27 of Arms Act, 1959 registered at Police Station Uchana, District Jind, Haryana.

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

“To, the SHO Sir, Uchana Police Station. Subject- Regarding looting by attacking the salesmen at the pump at gunpoint. Sir, It is requested that I Praveen son of Shri KarambirJat resident of Barsaula and I have been working as a salesman at HP Petrol Pump Ujala Filling Station near village

Khatkhad for about a year and yesterday on 28-10-2023 at about 11 pm, I and another salesman Raju son of Shri Satyanarayan Sharma resident Ghoghadia and Rakesh son of Shri Dharambir resident Khatkhad petrol pump owner were also on duty with us at night. At around 11 pm, I and Raju were on our duty and the owner was resting inside the office. At the same time, a motorcycle with the brand Splendor black color on which three young boys reached the machine at the petrol pump from Baroda via the wrong side service road. I thought that they were people to take oil, when I reached near the motorcycle and the machine, the boys riding the motorcycle had covered their faces. At the same time another motoraycle came to the petrol pump from the same side on which, three young boys were riding who also their faces had covered. At the same time the boy sitting at the back of the first motorcycle who was wearing a white shirt and lower got down from the motorcycle and put a pistol on my temple and said give me whatever you have quickly. At the same time the boys riding on both the motorcycles got down and went on both sides of me and started threatening me by showing the knives in their hands. Two of the boys took out cash of about 8 thousand rupees from both my pockets. Then all of them took me to the electric room at gunpoint and knifepoint where another salesman Raju was resting. As soon as they entered inside they overpowered Raju at knifepoint and started beating him and one of the boys beat him. They took out money from Raju's pant pocket which was about 7 thousand rupees. Then when I tried to make noise, one of the boys, who had a pistol on me, threatened to shoot me and took me towards the office where I tried to open the office door but the door was locked from inside. Then they brought me back to the electric room and snatched the phones from both me and Raju and locked us both in the room and closed the shutter from outside and called from outside and said that if we made any noise, they would shoot us. We are standing outside. After a long time, when we both heard the sound of a motorcycle going outside, after some time, Raju and I tried to open the shutter but it opened. When we went

near the office and wanted to tell the owner about the incident, then at that time Rakesh the pump owner came out and told us that he had seen the whole incident from inside because of the glass door and had informed the police. Then we saw that Raju was standing on the way out of the pump. The salesman's phone was found, then as per information given by pump owner Rakesh, police came. Pump owner Rakesh took me and Raju to CHC Kandela for medical checkup as we were injured, where Doctor sahab prepared my and Raju's medical report and now I, Raju and pump owner Rakesh have come to Police Station Uchana for action. 6 boys, name and address unknown, riding on two motorcycles injured me and Raju at gunpoint and knives and took away Rs. 15000 cash and my mobile Redmi Note 7. Legal action should be taken against them and our money and mobile should be recovered. Parveen Applicant Praveen son of Shri Karambir Jat resident of Barsaula, currently salesman KhatkanPump Mobile No. 90509-65762, 94168-03430 Aj police station On presenting the above written application along with MLRs by the complainant, which MLR No. PS/MLR/CHCK/13/2023 dated 29. 10. 2023 Ajane Raju has complained of a total of 2 injuries, both of which are shown as blunt and MLR No. PS/MLR/CHCK/14/2023 dated 29. 10. 2023, Praveen has reported a total of 2 injuries, both of which are shown as Blunt Simple. After studying the above application and MLRs, it was found that the crime under section 395/397 IPC, 25-54-59 Arms Act had occurred. Case number 306 dated 29. 10. 2023 under section 395/397 IPC, 25-54-59 Arms Act was registered at Police Station Uchana.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the applicant/accused submitted that the applicant-accused has been falsely implicated in the present case. He is in custody since 20.11.2023. It is then submitted that investigation is

complete and challan has already been submitted in the Court. It is further submitted that the trial of the case will take long time and no useful purpose would be served by keeping the accused further behind the bars.

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 involved in other case, meaning thereby he is a habitual offender.

4. Analysis

Considering the submissions made by learned counsel for the petitioner that the petitioner has already suffered sufficient incarceration i.e. 1 year and 1 month 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 to the Court on 12.06.2024 and charges are yet to be framed and total 25 prosecution witnesses are to be examined, which is sufficient for this Court to infer that the conclusion of trial shall 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 stands allowed.

20.12.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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