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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-194-2024

Date of decision: 13.01.2025

Sunil Sharma

*.....Appellant**Versus*

State of Haryana and another

*.....Respondents***CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Akshit Mehta, Advocate and
Mr. Johan Kumar, Advocate
for the applicant-appellant.

Mr. Chetan Sharma, DAG, Haryana.

None for the complainant.

SANDEEP MOUDGIL, J (ORAL)**Relief Sought**

1. The jurisdiction of this Court has been invoked under Section 14-A of the SC/ST Act read with Section 439 CR.P.C., seeking the concession of grant of regular bail for the petitioner in FIR No.540 dated 30.10.2023 under Sections 147, 149, 323, 427, 452, 506 and 201 IPC and Sections 3(1)(S) 3(2)(Va) of SC/ST Act, 1989 Act registered at P.S Saran Faridabad, District Faridabad.
2. Despite service, respondent No.3 has not put in appearance before this Court at the time of hearing.
3. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

*“ To Chowki Incharge Parvatia Colony, Faridabad Subject:-
Regarding fight, giving of beatings and comments relating to
Caste. Sir, I applicant Budh Ram s/o Ramjilal is the resident
of House No. 4644, Nangla Enclave part I, near Rampal
Sabji Mandi Faridabad. I constructed my house in the year*



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of 1995. There is a house situated of Kishan s/o Chander Pal in front of my house. which was constructed three years ago and they make excuses to evict us from there by saying that my house is situated in front of his house and I should vacate this place as I am dirty and by saying me as Bhangi and I gave them bad odor. To evict us from there Kishan alongwith his nephew, Chanderpal, Sachin, Pankaj gave beatings to my son namely Jai Hind from iron rod and sticks when he was alone and he sustained injuries. Kishan, Gopal and his nephew abused us and also uttered caste oriented words by saying that we belong to lower class and bhangi mela. By hearing this my wife Chandarvati and my daughter Ganga tried to save my son then 2-3 outsider persons alongwith them entered into my house and started vandalizing my house and started abusing us. Kishan alongwith others gave us threat that we should leave this place otherwise he will kill us and my son Jai Hind had already sustained injuries. Then we immediately rushed to B.K. Hospital and this incident is of dated 25.10.2023. Sir, I and my family have threat of our life from above mentioned persons. Two weeks ago they had already fought with my family however the matter got settled that they have admitted their mistake and told us that they would not do this again in future. This settlement was effected in the Parvatiya Chowki it is requested to you that we are Dalit, poor and labourer and the opposite party is influential persons (dabang) and they can go to any extent to evict us from that place. Sir, kindly take this matter as utmost importance and kindly take the cognizance of the injustice caused to us and a strict action to be taken against the accused as mentioned above. So, in future no trouble shall be cause to us. Sd/- Budhram Nagnla Enclave NIT Faridabad Mob: No. 8882242589. 13. Action Taken (Since the above information reveals commission of offence(s) u/s as mentioned at item No.2: (I) Registered the case and took up the investigation .”

Contentions

On behalf of the petitioner

The learned counsel for the appellant submits that the appellant

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is not named in the FIR and no specific role is attributed to him. He is alleged to have thrown a Danda used in the commission of crime in drain and that he is falsely embroiled in collusion with the complainant party on the basis of a concocted story. Appellant has never caused any injury to the complainant at any point of time nor used any filthy language regarding his caste. No other criminal case has been registered against the appellant and two accused are already granted the concession of regular bail.

On behalf of the State

4. The learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and produced custody certificate of the petitioner vide which the appellant has already undergone 02 months and 11 days of incarceration. Out of total 11 prosecution witnesses, none has been examined so far.

Analysis

5. Be that as it may, considering the fact that no specific role is attributed to the present appellant this case and considering that he is already behind bars for the last 02 months and 11 days and no prosecution witnesses out of total 11 has been examined so far, meaning thereby the conclusion of trial will take a considerable time, this Court is of the view that petitioner cannot be detained behind the bars for an indefinite period, which is suffice for this Court to infer that the conclusion of trial will take a considerable amount of time for which the petitioner cannot be detained behind the bars for an indefinite period.

Further, the offence under Section 3(1)(s) of the Act would indicate that key ingredient to attract Section 3(1)(s) of the SC/ST Act is abuses given to the member of the SC/ST should be at 'any place within

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public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as “Swaran Singh & Ors vs. State through Standing Counsel & Ors (2008) 8 SCC 435. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view.

Further, 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 ReInhuman 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.”

6. Therefore, to elucidate further, this Court is conscious of the basic and fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure as 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 the 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.

Decision

7. In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 14-A of the SC/ST Act read with Section 439 CR.P.C. on him furnishing bail and



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surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, the present petition is hereby allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

**(SANDEEP MOUDGIL)
JUDGE**

13.01.2025

manoj

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|-------------------------------|---|---------|
| 1. Whether speaking/ reasoned | : | Yes /No |
| 2. Whether reportable | : | Yes /No |