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2025:PHHC:036995



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13290-2025
DECIDED ON: 18.03.2025

SANDEEP KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lovish Rattan, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.255, dated 04.12.2021, under Sections 365 (302, 201, 120-B added later on and Section 365 deleted) IPC, registered at Police Station Goindwal Sahib, District Tarn Taran.

2. Facts

Facts as narrated in the FIR read as under:-

"Statement of Sandeep Kaur wife of Baljit Singh Resident of Kamboa presently R/o Goindwal Sahib Police Station Goindwal Sahib aged about 27 years Mobile No. 77101-57697 stated that I am a resident of the abovesaid address and working as a laborer. My marriage took place with Baljit Singh S/ Jagtar Singh R/o Village Kambo. After the marriage, I had 2

children, one boy and one girl. The name of the boy is Harmanpreet Singh who is aged about 8 years and younger girl is named Parveen Kaur who is fair, cut mark on the forehead and wearing pink pajama, white red blue boxed top, carrot t-shirt underneath and the height of the girl is 3 feet 6 inches. That my girl Praveen Kaur on 30.11.2021 at around 06 o'clock in the evening at had gone to pay respects at Gurdwara Bauli Sahib, Goindwal Sahib. When my daughter Parveen kaur did not return back to the house after long, we started looking for her. Me and my sister Suman, neighbor Laddo and her husband searched for her near the house, Gurudwara Bauli Sahib and relatives a lot but could not find any trace of the girl. Till now we kept searching on our own. I could not find any trace of my daughter. Now I am completely sure that my daughter is Praveen Kaur, has been abducted by an unknown person with some motive. I doubt that my daughter should not be harmed. Today I alongwith my father, Gursewak Singh, mother Raj Kaur were coming to you for providing the information, that I have met you on the way. Appropriate legal action should be taken against the unknown person who abducted the girl. The statement was written and heard. It is correct. /- Sandeep Kaur

Verification by Kuldeep Singh ASI Police Station Goindwal Sahib Date 04.12.2021 Action Police:- Today Mind ASI including ASI Kulwinder Singh No. 115/P.T.A., HC Nirmal Singh 26/P.T.A., PHG Channanjit Singh 9884 was riding a private vehicle, patrolling and searching for the checking vehicle of a suspicious person near Baba Jeevan Singh Chowk., when I met with abovesaid complainant, Suman, her Father Gursevak Singh, her mother Raj Kaur came and wrote her statement which was read out to her who accepted her statement as correct and signed her statement in Punjabi which statement was also confirmed by Gursevak Singh and Raj Kaur. The statement which I have verified is found to be a crime under 365 IPC, on which the statement is sent to the police

station of PHG Channanjit Singh 9884 to register the case. Additional officers sent in the service should be informed that the ASI will take the complainant along with us and conduct an investigation. - Kuldeep Singh ASI Goindwal..."

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the FIR was initially registered against unknown individuals, and its contents lack credibility. The allegations, it's claimed, were made with malicious intent to harass the petitioner, who had parted ways with the complainant. Furthermore, no evidence or recoveries have been made from the petitioner, which suggests that she has been wrongly implicated in the case. The petitioner's counsel asserts that the police have targeted her merely to close the case, despite a complete lack of evidence linking her to the alleged incident. The attention of this Court has been drawn to an orders dated 18.03.2024 & 10.07.2024 (Annexure P-6 collectively) passed in CRM-M-57442-2023 & CRM-M-15229-2024 respectively vide which co-accused persons namely Balwinder Singh @ Kaka and Sumandeep Kaur, have already been granted the concession of bail by this Court.

On behalf of the State

On the other hand, learned State counsel has vehemently opposed the grant of concession of bail to the petitioner but does not deny the long incarceration suffered by the petitioner and filed the custody certificate, which is taken on record.

4. Analysis

Considering the long incarceration of the petitioner i.e., 3 years, 3 months and 3 days and not involved in any other case, meaning thereby he

is a person of clean antecedents coupled with the fact that the material witness Jit Singh @ Jita has absented himself despite being bound down, who is the only witness who had stated that he had seen all the accused taking the child to the doctor and the complainant has failed to identify the petitioner and has turned hostile.

This Court is sanguine of the fact that conclusion of trial shall take considerable time, as out of total 22 prosecution witnesses, only 7 have been examined so far after framing of charges on 28.07.2022, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period. 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 basic and 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.

6. Relief:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail subject to his furnishing bail and 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

18.03.2025
Sham

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No