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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19171-2025
DECIDED ON: 22.04.2025

HABEEN ALIAS HABIN ALIAS HABIB

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Arjun Attri, Advocate
for the petitioner.

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of BNSS for grant of regular bail to the petitioner in FIR No.125, dated 05.04.2024, under Sections 3/13(1), 8/13(3) of the Haryana Gauvansh Sanrakshan & Gausamvardhan Act, 2015 and Section 120-B of IPC, registered at Police Station Sadar Nuh, District Nuh.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

To, SHO Police Station City Nuh Jai Hind. Today I the SI along with ESI Satbir Singh No.603/Nuh, HGH Belt No.241 and were riding on a government vehicle Bolero No.HR-27-GV-5892 driven by Bijendra Singh (Kaushal Rojgar) and while patrolling were present at Palwal T. Point Nuh that an informer gave



information that Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi, Jamaluddin son of Shokat, Habin son of Haji Gunga, Mustafa son of Akhtar Ali alias Chuttan and Mubina wife of Akhtar Ali alias Chuttan residents of village Ghasera Police Station Sadar Nuh are involved in cow slaughtering. Today also in Palla Pahar Bal after doing cow slaughtering, after cutting beef into small pieces Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi residents of Ghasera Police Station Sadar Nuh, will keep it in the room of the house and by packing in polythene would sell it. If the house of Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi resident of Ghasera Police Station Sadar Nuh is raided quickly then he can be apprehended alongwith the beef. On considering the information to be true, the passers-by were asked to join the raiding party but all the passers-by, being from the same community, went away expressing their legitimate compulsions. After informing the fellow employees of the information alongwith the informer reached at the disclosed place then the gate of the house was found to be locked from inside. Upon knocking the door all the men and one woman managed to escape through the roofs while making noise from inside the house. That upon opening the gate from inside after jumping from above and upon looking inside the room, about 50 Kg of beef freshly slaughtered in small & big pieces and one axe, one iron knife, one pressure of iron, one electronic weighting scale and one small steel plate were found, which were kept in a plastic bag and a separate parcel was prepared which was stamped by stamp BS. The stamp was handed over to ESI Satbir Singh for its later use. That the aforesaid recovered about 50 kg of beef was put in separate plastic bag and a parcel was prepared and was taken into police custody so as to serve as a proof on receipt of the list. On receipt of the list, signatures of the witnesses were obtained. Which the accused Akhtar Ali alias Chuttan son of Abdul Salim alias Ghasita Qureshi,



Jamaluddin son of Shokat, Habin son of Haji Gunga, Mustfa son of Akhtar Ali alias Chuttan and Mubina wife of Akhtar Ali alias Chuttan, resident of Ghasera Police Station Sadar Nuh, aforesaid people together committed cow slaughtering and by keeping the beef in the room of the house of Akhtar Ali alias Chuttan had committed offence under Section 3/13 (1), 8/13 (3), HGS GS ACT and 120-B IPC, upon which for the registration of FIR it is sent to the Police Station through ESI Satbir Singh No. 603/Nuh. After the registration of FIR its number be intimated. For the further investigation of the case, the other investigating officer be sent at the spot. I the SI alongwith case property alongwith fellow employees are present at the spot. Today:- Village Ghasera. Sd/- BACHCHU SINGH CS STAFF NUH Date 05.04.24 AT 8.50 a.m.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends the petitioner has been falsely implicated in the present case and the name of the petitioner was disclosed by the secret informer falsely and there is no iota of evidence which can connect the petitioner with the alleged offence. He submits that co-accused has already been granted concession of regular bail by this Court vide order dated 15.10.2024 passed in CRM-M-34874-2024 (Annexure P-3). Moreso, the investigation in this case is complete as challan stands presented on 24.03.2025 and charges are yet to be framed and 11 prosecution witnesses are cited by the prosecution, which is sufficient to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

**On behalf of the State**

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record and submits that 50 kgs of beef has been recovered in the present case.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender as he is involved in other FIR also but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, considering the custody period i.e. 02 months and 14 days for which the petitioner has suffered incarceration as is evident from custody certificate; co-accused has already been granted concession of regular bail, in addition to the fact that investigation is complete, challan stands presented on 24.03.2025 and charges are yet to be framed and 11 prosecution witnesses are cited by the prosecution, which is sufficient to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained 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.

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 land the petitioner in a situation of denial of the concession of bail.

5. **DECISION:**

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

22.04.2025

anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No