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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34131-2024

DATE OF DECISION: 16.01.2025

PAWAN

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kunal Dawar, Advocate for the petitioner(s).

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

Mr. Yashveer Kharb, Advocate for

Mr. Vishal Yadav, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 439 Cr.P.C. for grant of Regular Bail to the petitioner in FIR No. 87 dated 25.2.2024 under Sections 346 IPC (later on challan was presented u/s 302, 364, 120-B, 201 IPC, 1860 and section 25 A of Arms Act), registered at Police Station Chandhut District Palwal, Haryana.

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

‘Respected Incharge Sir, Police Post Amarpur. Subject: With regard to disappearance of Rampal s/o Murari Lal, Village Rampur Khor, on 24.02.2024 at 5:00/6:00 PM. Sir, I, Surender s/o Murari Lal, am resident of Village Rampur Khor, my younger brother Rampal went out of the house while talking on phone around 5:00 to 6:00 PM and he has not been found till now. We have also given a complaint in police post Amarpur and we have



not found him despite trying to find him everywhere. He is of fair complexion, he is a slim guy of 5ft 4inch, aged 55 years and he is wearing a check shirt, a black jacket over it with blue colored lowered and black slippers. Sir, it is prayed to you that please try to find him. Thanking you, Applicant Sd/- Surender S/o Murari Lal, Village Rampur Khor, Phone no. 9671357313. Police Proceedings Today I HC, SPO Kewal Singh 366 was present for crime patrolling at Amarpur Chowk, above named Applicant Surender after meeting us submitted a above mentioned application. On the basis of application crime u/s 346 IPC has been found out and as such, the application has been sent through SPO Kewal 366 for registration of the case. After the registration of the FIR I HC informed the Applicant of village Rampur Khor. Today after receiving the above-mentioned complaint No. 87 dated 25.02.2024 u/s 346 IPC PS Chandhut has been registered and Copy of the FIR prepared by Computer CCTNS and will be sent through Post to the Ilaqa Magistrate and Senior Officials for their perusal. SPO Kewal 366 IO has been sent to the place of occurrence along with copy of police file and original complaint.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case on the basis of the disclosure statement made by co-accused. He submits that the petitioner was even not named in the FIR and the only allegations qua the petitioner is that he was part of the conspiracy and the main accused Dharmender has handed over the pistol to the petitioner after commissioning of the offence. He further submits that dead body was found in decomposed condition and as per the PMR, the cause of death is not a fire arm injury but asphyxia due to drowning. He has further argued that the antecedents of the petitioner are clean, meaning thereby, he is not

a habitual offender.

**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. According to which, the petitioner is behind bars for 10 months and 15 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the role of the petitioner is carrying the fire arm pistol which was used in the commissioning of the offence but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. Analysis

Be that as it may, on a specific query put by this Court, State Counsel candidly admitted that dead body was found in decomposed condition and as per the PMR, the cause of death is not a fire arm injury but asphyxia due to drowning, therefore, it cannot be prima facie recorded at this stage that the said weapon was used in the commissioning of the offence which was recovered from the petitioner.

This Court is sanguine of the fact that investigation is complete, as challan is presented on 24.05.2024, charges have been framed on 25.09.2024 wherein out of 26 prosecution witnesses, none has been examined so far and considering the nature of allegations involved in the present petition and the circumstances including the documentary evidence being part of the challan it would be unjust and unfair to detain the petitioner behind the bars for an indefinite period as it would serve 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.”

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.

(SANDEEP MOUDGIL)
JUDGE

16.01.2025
anuradha

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