



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

210

CRM-M-43949-2024

DATE OF DECISION: 11.02.2025

MOHIT

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Rajesh Bansal, Advocate with
Mr. Sudhir Kumar, Advocate and
Mr. Jitender Bhardwaj, Advocate for the petitioner(s).

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 in case FIR No.0230, dated 13.04.2024 under Sections 34, 379B, 392, 397 of Indian Penal Code, 1860 and Section 25(1-B)(a) of Arms Act, 1959 (Section 307, 341, 482, 201, 120B of Indian Penal Code, 1860 added lateron), registered with Police Station Chandnibagh, District Panipat (Annexure P-1).

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

‘Copy of application is attached. To, SHO, Police Station Chandnibagh, Panipat. Sir, it is submitted that I, Rajesh Kumar son of Late Sh.Rati Ram, is resident of House No.1945, Sector-12, HUDA. On dated 12.04.2024, I along with my brother Om Parkash son of LateSh.Rati Ram and Krishan son of Sh.Rati Ram, at about 8:45/9:00 p.m., after closing our shops were coming to Panipat



from village Bapoli in car No.HR-26EH-5461 towards house. When we reached near the turn of village Ugrakheri in front of CB Woolen Mill, then driver of one Swift Dzire Car suddenly came in front of our car and then two goons get down from the car, who were carrying pistol/revolver like weapon in their hands and they after getting down mirror of our car, put pistol/revolver like weapon on our temple and they demanded our bag from us. When we refused to give the bag then they have given beatings to me and to my brother and caused injury on my face and on the face of my brother Om Parkash with the Butt of their pistol/revolver and fired from their pistol/revolver like weapon, one fire pierced from the roof of our car. After that above mentioned goons forcibly snatched the bag from the hands of my brother Krishan, who was having the same. They have snatched the bag which was having Khata Bahi of my shop, Bill Book, Keys of Shop and approximately Rs.80,000/-. Now, I and my brother Om Parkash after conducting our medical come present before you. Strict legal action may be taken against the four goons riding in white colour Swift Dzire Car, name and address not known. In this incident there were four goons. Two committed robbery with us and other two were sitting in the car. Copy of medical is enclosed. Legal action may be taken against accused persons under Section 3798, 392, 397, 34 IPC, 25(18)(A-54-59) A. Act. Sd/- Rajesh Kumar, Phone No.9671012121.'

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. He submits that witnesses No. 1 to 3 namely Rajesh, Om Parkash and Krishan s/o Rati Ram were constantly stating in their depositions before the Trial Court that none of the accused stopped their car and the petitioner has been roped in this present FIR only on the basis of the suspicion. He further submits that in Test Identification Parade, the complainant and the eye



witness could not identify the present petitioner, added with the fact that the investigation in this case is complete as challan stands presented on 17.07.2024, charges is framed on 20.09.2024 and out of 25 prosecution witnesses, none has been examined so far which is sufficient to infer that the conclusion of trial is likely to take considerable time. He has further argued that the antecedents of the petitioner are clean, meaning there by he is not a habitual offender, 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. According to which, the petitioner is behind bars for 9 months and 15 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that in the CCTV footage, the petitioner was visible and he was part of the conspiracy and racky for collecting the information about the victims having cash and thus snatched articles and money by using criminal force, therefore, prays for dismissal of the petition.

4. Analysis

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 9 months and 15 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, considering that he has not been identified by the complainant in the Trial Court which has also placed on record (Annexure P-3) collectively including the Test Identification



Parade which took place on 07.05.2024 and thus probability of acquittal of the petitioner in the present FIR cannot ruled out, moreover, the State Counsel has not produced any concrete material to connect the petitioner with the incident 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 on 17.07.2024, charges is framed on 20.09.2024 and out of 25 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, 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.

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

11.02.2025
anuradha

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