



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216

CRM-M-51656-2024

Date of decision: 10.02.2025

Sukhdeep Singh @ Deep

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr P.S. Ahluwalia, Advocate and
Ms. Saumya Ahluwalia, Advocate and
Mr. Gaurav Jain, Advocate for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

Relief Sought

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail for the petitioner in FIR No.57 dated 12.06.2022 under Section 364 IPC (later final report was presented for offences under Sections 302,201,34 IPC) registered at P.S Urban Estate, District Patiala.

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

“ It is entered that a written statement of Baldev Singh S/o Fakirya Singh R/o Balbir Colony, Choran, P.S. Urban Estate, Patiala, District Patiala age around 66 years, mobile No. 85560-02975, written by SI Gurmeet Singh 2374 posted at P.S. Urban Estate, Patiala has been received for registration of case against unknown person/s for offence U/s 364 IPC by hand through Ct. Mandeep Singh 1923 at the Police Station, the contents of which are, "Statement of Baldev Singh S/o Fakirya Singh R/o Balbir Colony Choran, P.S. Urban Estate, Patiala, District Patiala, age around 66 years, mobile No. 85560-0297. Stated that I am



resident of the aforesaid address and have retired from Food & Supply Department. I have two sons, who are both married. My elder son Feroz Khan who lives separate from me and my younger son Qashim Mohammad alias Lovely who had been telling us that he works in Fords car agency in Delhi, who had been coming home every Saturday and had been leaving Monday morning. Yesterday, on 11.06.2022, my son Qashim Mohammad alias Lovely had come home at around 04:00 P.M. and then at around 7:30 P.M. had left on his car No. CH-01-AA-9078 Make Alto saying to going to his some friend's party, but he had not returned home in the night and his mobile phone is also coming switch off. Then today morning I taking along my elder son Feroz Khan had started searching him and my son Qashim Mohammad alias Lovely's car was standing on Bypass Road, Near Tikoni Market, Opposite Phase 2, Urban Estate, Patiala on a side on the road, which we had checked properly but the car was locked and there were blood stains on the rear door on the driver side. When we had seen inside the car through the glass then there was a lot of blood on the car's rear seat also. After that we had enquired a lot about our son but nothing could be found. On seeing the car's condition, it appears that my son Qashim Mohammad alias Lovely has been killed by some unknown person/s or he have been kept hidden at some undisclosed place with the intent to kill him. I taking along my son Feroze Khan was going to P.S. Urban Estate, Patiala, for giving information, when you have met near Gurdwara Singh Sabha, Phase 2, Urban Estate, Patiala. I have got written my statement to you in front of my son Feroze Khan, which I have read, heard and found to be correct. My son may be searched and appropriate legal action may be taken against unknown person/s. Sd/- Baldev Singh, statement corroborated Sd/ Feroz Khan, Attested Sd/ SI Gurmeet Singh, P.S. Urban Estate, Patiala, Date 12.06.2022. Police Proceedings: Today I/SI along with ASI Jaswinder Singh 2517, ASI Gurvinder Singh 583, HC Malkiat Singh 522 and Ct. Mandeep Singh 1923 on official vehicle No. PH-11-CF-3803 being driven by driver ASI Kuldeep Singh 979 along with laptop and printer had gone for gashat in the P.S. jurisdiction when Baldev Singh S/o Fakiriya Singh R/o Balbir Colony Choran along with his son Feroz Khan had come present and had got written his statement to me/SI, which statement was written word to word as narrated and the same was then read to him, who after reading, hearing and on assuming it to be correct then Baldev



Singh had signed in Punjabi under his statement which statement is corroborated by his son Feroz Khan, which is attested by me/SI. From the statement an offence U/s 364 IPC is made out. On which the statement is being sent by hand through Ct. Mandeep Singh 1923 to the Police Station for getting registered a case against for the aforesaid offence against the unknown person/s. After registering the case the case number may be intimated. Special reports may be issued. The Control Room, Patiala may be informed through W/M. I/SI along with colleagues taking along complainant in the case proceed for searching the boy Qasim Mohammad alias Lovely. Today Near Gurdwara Singh Sabha, Urban Estate, Phase 2, Patiala Time: 04:20 P.M. Today at Police Station: On receipt of aforesaid statement the aforesaid case for the abovementioned offence was registered against unknown person/s and necessary entries were got completed in the record from the MHC P.S. and the Incharge, Control Room, Patiala is being informed through email. The original statement along with copy of FIR is sent by hand through Ct. Mandeep Singh 1923/PTL to SI Gurmeet Singh 2374/PTL posted at P.S. Urban Estate, Patiala for further investigation. ”

Contentions

On behalf of the petitioner

3. The learned counsel for the petitioner submits that the petitioner has been falsely implicated as the petitioner is not even named in the instant FIR nor any overt act has been ascribed to him. He further submits that the name of the petitioner has surfaced in the extra-judicial confession suffered by co-accused Razia Begum before one Feroze Khan. It is contended that the petitioner is in custody since 13.06.2022 and no recovery is to be effected from him, therefore he prays for grant 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, which is taken on record. As per custody certificate, the petitioner has suffered incarceration for a period of 02 years, 07 months and 25 days. He prays



for dismissal of the present petition stating that serious allegations have been levelled against the petitioner. However, he is not in a position to controvert the fact that the complainant has turned hostile. He informs the Court that in the present FIR, challan stands presented on 05.09.2022 wherein, the prosecution has cited total 31 witnesses, out of which 9 have been examined so far, after framing of charges on 09.12.2022.

Analysis

5. Be that as it may, considering the facts of the present case and taking note of the fact that the complainant has turned hostile and that the petitioner is a person of clean antecedents wherein challan stands presented on 05.09.2022 and after framing of charges on 09.12.2022, out of total 31 PWs, only 09 have been examined, meaning thereby the conclusion of trial shall take considerable time and as per the principle of the criminal jurisprudence, no one should be considered guilty till the guilt is proved beyond reasonable doubt, therefore, detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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

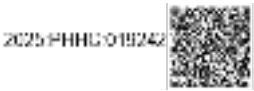


accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 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 483 of BNSS, 2023 on him 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

10.02.2025
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