



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57288-2024
DECIDED ON: 14.05.2025

IRFAN @ KAATU

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.S. Jattan, Advocate
for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked for the second time under Section 483 of the Bharatiya Nagarik Suraksha Sanita, 2023 for grant of regular bail to the petitioner in case FIR No. 13 dated 30.01.2019 (Annexure P-1) under Section 394, 395, 396, 397, 302, 120-B, 216, (Section 149 and 412 PC added lateron) of Indian Penal Code 1860 and Section 25 of the Arms Act, 1959, registered at Police Station Sector-20, Panchkula, District Panchkula.

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

“The copy of the complaint is as under; To The SHO Sahib, Police Station Sector 20, Panchkula, Sir, it is requested that I, Vinod Kumar S/o Mr. Pawan Kumar Agarwal am resident of Flat No. 17, GH 25, Sector 20, Panchkula. I have taken half share of the FIRST. FLOOR of SCO No. 392, Sector 20, Panchkula on rent for two months. In which lam work in

Property and Finance. Which, today evening around 5-5.30 P.M. I. was playing cards sitting with 10-12 friends in my shpwroom. At that time suddenly 8-10 young boys came in through the door. All of them were carrying pistols in their hands and were also holding 3-4 helmets. Those, who had two backpacks also with them. As soon as they entered inside, they gave 2-3 fire shots towards us. After that they all came to us. All of them showed fear of pistols to all of us with pistols in their hands and asked us to take out all the cash and jewellery you have and put them in our bag, when 2-3 boys refused to give cash, those young boys started hitting with the helmet and started scuffling. In the meantime, 2-3 boys shot two boys with pistols/revolvers in their hands and while firing snatched money, mobile and our ring, chain and gold and ran away. When they opened fire, one boy, Sunny, jumped down from the window in fear. Those who have been shot and who have been injured by jumping all admitted in the hospital. can recognize all these young boys as they come forward me. Legal action should be taken against these unknown young boys who have looted with us. After asking for the list of all the looted goods, we will provide it to you later.”

3. This Court has sought report from the Additional District & Sessions Judge, Panchkula along with zimni orders of the proceedings which has been received.

4. A perusal of the said report would depict that after framing of charges on 04.12.2020 a supplementary challan was also filed against one accused namely Mohit and charges therein were framed on 23.12.2020. There are total 84 witnesses out of which 37 witnesses have been examined as has been stated by the Additional District & Sessions Judge, Panchkula. He has also summarized the proceedings conducted so far which reads as under:-

“1. On dated 10.01.2024, one PW namely SI Surjit Kumar was present and his examination in chief had been recorded. His cross examination was deferred as in respect to certain documents on record there was some ambiguity i.e. to be clarified. The said witness was discharged on that day and bound down for 11.03.2024.

2. On dated 19.01.2024, file was put up by the concerned Ahlmad alongwith copy of order dated 08.01.2024 passed by the Hon' ble High Court in CRM M no. 59933-2023 where by the learned trial court was directed to make every possible endeavour to expedite the trial. Hence, court notice to learned defence counsels for 07.02.2024.

3. On dated 07.02.2024, in pursuance of notice, learned defence counsels appeared. The case was fixed for 29.02.2024 for prosecution evidence.

4. On dated 29.02.2024, no PW was present. The case was adjourned for 11.03.2024.

5. On dated 11.03.2024, the case was fixed for remaining evidence of the prosecution. An application under Section 311 Cr.P.C. for recall the prosecution witness PW1 Vinod, PW6 Mohan Singh for further cross-examination filed. The case was adjourned to 30.03.2024 for consideration on the abovesaid application.

6. On dated 30.03.2024, arguments on application under Section 311 Cr.P.C. not advanced. The case was adjourned to 08.04.2024 for consideration on the abovesaid application.

7. On dated 08.04.2024, learned counsel for the petitioner-accused did not put appearance for arguing in respect to the application under Section 311 Cr.P.C. The case was adjourned to 22.04.2024 for arguments.

8. On dated 22.04.2024, arguments on the application under Sections 311 of Cr.P.C. not advanced. The case was adjourned to 07.05.2024 for arguments on the abovesaid application.

9. On dated 07.05.2024, arguments on the application under Sections 311 of Cr.P.C. not advanced. The case was adjourned to 13.05.2024 for arguments on the abovesaid application.

10. On dated 13.05.2024, the application under section 311 Cr.P.C. had been dismissed. The case was fixed for 06.06.2024 for prosecution evidence.

11. On dated 06.06.2024, one PW namely ASI Ramesh Chand was present and examined as PW36. Now, case was adjourned to 05.09.2024 for remaining evidence of the prosecution.

12. On dated 05.09.2024, no PW was present. The case was fixed for 24.10.2024 for prosecution evidence.

13. On dated 24.10.2024, no PW was present. The case was fixed for 28.11.2024 for prosecution evidence.

14. On dated 28.11.2024, one PW namely Smt. Riti Saini was present and examined as PW37. The case was fixed for 19.12.2024 for prosecution evidence.

15. On dated 19.12.2024, no PW was present. The case was fixed for 20.02.2025 for prosecution evidence.

16. On dated 20.02.2025, PW HC Sanjeev Kumar was present through VC but could not be recorded as learned counsels not agreed for recording the statement of the witness through VC and requested for calling the witness in the court. The case was adjourned to 01.04.2025 for prosecution evidence.

17. On dated 01.04.2025, PWs HC Sanjeev Kumar and Ct. Vikramjit were present through VC. Learned counsel requested that keeping in view the nature of the offence, the witnesses were called in person. Hence, the witnesses were directed to appear in person before the court on 09.07.2025.”

5. A perusal of the above would indicate that delayed trial cannot be shifted to one stakeholder in the instant trial proceedings for whatever reason as the trial was deferred from time to time on various reasons and in

that eventuality, atleast the trial Court cannot be held responsible for the prolonged proceedings or the undue delay in any way.

6. However, coming back to the case in hand, the name of the present petitioner was nominated as an accused on the disclosure statement of co-accused Jitender Kumar @ Jony on 09.06.2019 and since then he is confined in judicial custody.

7. According to the prosecution version, during investigation Rs.2500/- along with a mobile phone and a motorcycle was got recovered from the present petitioner but no specific attribution is coming forth qua any overt act and as such, neither any weapon alleged to have been used by him nor any recovery to that effect has been effected from him. Moreover, co-accused namely Rohit Kumar, Hemant Kansal, Naveen Kumar, Kuldeep Singh @ Bawa, Mohit, Sunil Kumar @ Rana and Vineet @ Vicky have already been granted the concession of regular/anticipatory bail by a Coordinate Bench of this Court and by the trial Court vide orders dated 28.03.2022 (Annexure P-2), 21.05.2022 (Annexure P-3), 08.07.2022 (Annexure P-4), 17.10.2023 (Annexure P-5) respectively.

8. In addition to above effect, it needs to be borne in mind that out of total 84 prosecution witnesses only 37 witnesses have been examined so far consuming two and a half years by now from the date of framing of charges on 04.12.2020, which is suffice for this Court to infer that the conclusion of trial shall take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve no purpose.

9. 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.”

10. 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 “**Balwinder Singh versus State of Punjab and Another**”, **SLP (Crl.) No.8523/2024**. Relevant paras of the said judgment reads as under:-

“7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

8. It is not for nothing the Author Oscar Wilde in “The Ballad of Reading Gaol”, wrote the following poignant lines while being incarcerated:

*“I know not whether Laws be right,
Or whether Laws be wrong;
All that we know who be in jail
Is that the wall is strong;
And that each day is like a year,*

A year whose days are long.”

11. In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on him furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

12. In the afore-said terms, the present petition is hereby allowed.

13. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

14.05.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No