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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-58042-2024
DATE OF DECISION: 21.01.2025

REENA

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rohit Mittal, Advocate and
Mr. Monu Sharma, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This third petition petition has been filed under Section 439 Cr.P.C. seeking the concession of regular bail for the petitioner in FIR No.05 dated 08.01.2022 under Sections 370(5), 120-B of IPC and 81 of JJ Act, registered at Police Station DLF, Phase-III, District Gurugram.

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

‘TO, SHO, DLF Phase 3 Gurugram 1, Umesh Lohia S/o Bishambar Lohia r/o Nathupur U/37 Road DLF Phase 3, Gurugram am residing I am a taxi driver. Today, I was going to my village Nathupur, Gurugram by my Taxi no. HR 55 Y 1214 from Plot Khyala Rajori Garden, Delhi. On reaching Dhola Kus, 2 women signaled me to stop my taxi. I stopped my vehicle because I was signalled by the women. Both the women were carrying two kids one in each lap aged about 20-25 days respectively. There was male member also with them. They asked me about my destination. I told them that I was agoing to Shankar Chowk, Gurugram. Thereupon, they asked to leave them at IFCO Chowk, Gurugram:



I told them that I would leave them at Shankar Chowk, Gurugram. I asked them to sit in my vehicle. It was my taxi. After some distance from Dauhla Kua, the two women and the men asked me as to whether I can drop them at Alwar, Rajasthan. I told them I would charge Rs. 3000 and leave them at Alwar, Rajasthan. They told me that they would give Rs. 4000 to me provided I first takes them to Alwar, Rajasthan and drop them at Ghodewala Mandir Raghveer Nagar, Delhi. I agreed to do the same. I took them to Khedki, Dola toll, Gurugram and had CNG filled up in my vehicle. Thereafter, I started for Alwar. They told me to stop at a Chemist Shop on the way because they have to buy milk and bottle for the Children. I stopped the car in the market after crossing Manesar Flyover. The man in the vehicle purchased the milk bottle from the medical store and also milk from the Halwai shop. They were calling amongst themselves as Harjinder Singh, Surinder Kaur and Neha. Meanwhile, one of the women received a telephone call. They were talking amongst themselves that they would reach Alwar within 2 hours. They will not stop overnight. After sometime, the women in the car received the telephone again and she told that we will take Rs.3,00,000. The women in my car told me that they are not going to Alwar. I started back from Manesar Flyover for Gurugram. I had a doubt that they have purchased the kids. I told them that I have to buy some goods from DLF PH 3, Moulisari Metro Station, Gurugram. Thereafter, I shall leave them at Delhi. After sometime I stopped the car near Moulisari Road, Metro Station, Gurugram and went to the market to buy the goods. I suspected that they have stolen the kids from somewhere. I along with 2 women, man and 2 kids came to the police Station, DLF PH 3, Gurugram. I have given my complaint to the police Station. Legal action may kindly be taken against them." 9953993098 complainant SD Umesh above mentioned complaint, Umesh Lohia submitted the complaint himself in the police station. From the perusal of the complaint offence under section 37(5), 34 IPC were made out and the FIR was prepared on the computer and the same was sent vide e-mail and Ilaga Magistrate. to Higher Authorities.'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present FIR as she was not named in the FIR and was later arrested on the basis of the disclosure statement made by co-accused. He has further submitted that the petitioner has no role to play in the alleged offence as neither the petitioner has sold any child nor the child has been recovered from her. He contends that even the complainant has not supported the version of the prosecution. He has further argued that the main accused namely Satender has already been granted concession of regular bail by the Trial Court vide order dated 07.03.2024 after having suffered custody of almost 2 years and 2 months whereas the petitioner is on better footing than the main accused Satender as the petitioner has undergone custody for a period of 3 years and 9 days and her antecedents are even clean, meaning thereby she 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 3 years and 9 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that there are heinous allegations levelled against her i.e. selling the child for money, 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. 3 years and 9 days, the main accused has already been granted concession of bail by this Court, antecedents of the petitioner are clean, meaning thereby she is not a habitual offender, 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 06.04.2022 and 02.09.2022 charges stands framed on 06.08.2022 and 17.01.2023 and after framing of charge, out of 46 prosecution witnesses, only 16 PWs have 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 Nimesh 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 her 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

21.01.2025
anuradha

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