



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

228

CRM-M-57733-2024

DATE OF DECISION: 04.02.2025

AKASH DUTTA ALIAS SHANU ALIAS SONU

...PETITIONER

Versus

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ankit Kharbanda, Advocate for the petitioner(s).

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)1. Relief Sought

This petition has been filed under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in F.I.R No.0065 dated 01.07.2024 under Section(s) 379B(2), 411 and 120-B of Indian Penal Code (wherein Section 411 of Indian Penal Code added later on) registered at Police Station Gate Lambran, District Jalandhar Rural.

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

‘Statement of Kamlesh Yadav son of Sampat Yadav resident of Sirwat Police Station Chilhia District Sidarth Nagar Uttar Pradesh at present resident of Shadi Lal and Son's Police Station Lambran District Jalandhar age about 40 years mobile number 7508272442 stated that am the resident of the above-said address and do labor work. I am residing in Punjab from about 28 years ago, from the year 1996 only I am residing in the house of Shadi Lal-owner resident of Lambran and I perform their household



work, agricultural work, and the work of the cold store. I have two children, one son and one daughter, the name of the son is Amresh Yadav the age of whom is about 15 years who studies in 8th class in Khalsa School, Lambran. The name of the daughter is Nikita the age of whom is about 4 years, Yesterday dated 30-06-2024 at time around 8:30 P.M. outside our house Kartik son of Rakesh Kumar alias Chirhi resident of Lambran District Jalandhar who is the friend of my son, who came to call my son from the house and said that we will return after some time. Who took my son upon his motorcycle make Splendor. When after a long time my son did not return home then in search of my son I walked towards the field towards Sheehmar Jathereyan. I saw that at the motor of Joginder Singh alias Billa resident of Lambran a little before the Sheehmar Jathereyan, there my son Amresh Yadav was shouting. I quickly ran there and while hiding saw that Kartik has held the arms of my son Amresh Yadav from behind and Akash Dutta alias Shanu son of Gulshan Dutta resident of Lambran Police Station Lambran District Jalandhar standing in front of him was holding knife in his hand. Akash Dutta alias Shanu above-said snatched the silver chain from the neck of my son and both of them fled towards the Lambran side while riding upon their respective motorcycle passing through the un-metalled(Kacha) road/way. When I reached to my son, there was a wound on the stomach of my son. After arranging the conveyance, with the help of my family members I took my son Amresh Yadav to Innocent Heart Multi Specialty Hospital, Khambran, Jalandhar for treatment where my son Amresh Yadav is under treatment. Akash Dutta alias Shanu son of Gulshan Dutta and Kartik son of Ramesh Kumar alias Chirhi resident of Lambran Police Station Lambran District Jalandhar in connivance with each other after taking my son while making excuse after causing injury upon his stomach has snatched his silver chain. In relation to which I along with my brother Suresh Yadav have come present at the police station for getting recorded my statement. Appropriate legal action may kindly be taken against the above-said. Statement has been recorded is correct. Sd/-



*Kamlesh (in Hindi) Witness Sd/- Suresh Yadav (in Hindi), Attested
Karnail Singh A.S.I Police Station Lambran dated 01-07-2024.'*

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 account of previous enmity between the parties. He submits that there is unexplained delay of one day in lodging the FIR and false recovery of silver chain has been planted upon the petitioner. He further submits that nothing is to be recovered from the petitioner and the antecedents of the petitioner are clean, meaning thereby he is not 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 7 months and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that serious allegations are levelled against the petitioner but is not in a position to controvert the submissions made by learned counsel for the petitioner.

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. 7 months and 1 day, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, nothing is to be recovered from the petitioner 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 22.08.2024 charges stands framed on 04.11.2024 out of 14 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

04.02.2025
anuradha

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