



228 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59171-2024

Date of Decision:04.03.2025

SAMEER ALIAS MOHD HANIF SHAIKH
Vs.

...Petitioner

STATE OF PUNJAB

x

...Respondent

CORAM:- HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.P. Sharma , Advocate for the petitioner.
Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

1. **Relief sought**

The jurisdiction of this Court has been invoked under Section 483 of The Bharatiya Nagrik Suraksha Sanhita (BNSS) praying for grant of regular bail to the Petitioner in case bearing F.I.R.No. 88 Dated 18.03.2023 under Sections 419, 465, 467, 468, 471,120-B IPC and Section 19, 20 Transplantation of Human Organs and Tissues Act, 1994 registered at Police Station Dera Bassi, District S.A.S.Nagar (Annexure P-1).

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

*“First Information Contents: Copy of Information Jai Hind”
Incharge Police Station, Dera Bassi, District S.A.S.Nagar.
Todayh I S.I. alongwith S.I. Sathir Singh No.788/S. A S
Nagar, Havaladar Harpreet Singh No.815/S A S Nagar and C-
2 Varinder Singh No.93/S A S Nagar were present at bus
stand Dera Bassi on patrolling and checking of suspicious
persons and for search of suspected vehicles then one secret
informer has given one separate information by coming
present near to me S.I. that person namely Raj Narain
resident of U.P. by meeting with some unknown persons by*



preparing forged signatures of persons of selling and purchasing of kidneys while conniving with employees of Indus Hospital Janetpur, Dera Bassi, District S.A.S.Nagar by giving temptation of money to the general public have been running the racket of kidney transplant and by the employees of above said hospital by making hungling bungling in samples before doing kidney transplant have been transplanting the kidneys. That the information being confirmed and reliable fulfilled the ingredients of offence under Section 419, 465, 467, 468, 471, 120-B IPC, Sec 19,20 Transplantation of human Organs and Tissues Act 1994 is made out against Raj Narain resident of U.P., unknown persons and employees of Indus Hospital Janetpur Dera Bassi, District S.A.S.Nagar for giving temptations of money to the ordinary people by inducing them by forging signatures illegally. AS such information is being sent through C-2 Varinder Singh No.93/S A S Nagar to Police Station for registration of FIR under the said offences against above said persons and employee, by registering case number be informed. Information be given at control Room. I S.I. alongwith companion employees is going to Indus Hospital for investigation. Sd/- Ashok Kumar, ASI Police Station Dera Bassi, District S.A.S.Nagar, Dated 18.03.2023 at Bus Stand Dera Bassi, District S.A.S.Nagar at: 10-30 PM”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the the FIR has been registered by the police in collusion with the complainant as there is no private complainant and the same is lodged on the basis of secret information under Transplantation of Human Organs and Tissues Act, 1994, and only one Raj Narain is named as accused. He further submits that the co-accused Raj Narain has been granted bail by the learned Additional Sessions Judge, S.A.S.Nagar (Mohali) vide order dated 10.8.2023



(Annexure P-2), co-accused Abhishek Kumar has been granted regular bail by this Hon'ble High Court vide order dated 11.10.2023 (Annexure P-3) and Dr. Surinderpal Singh Bedi has been granted anticipatory bail by this Court vide interim order dated 17.5.2023 (Annexure P-4) and final order dated 12.2.2024 (Annexure P-5).

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate issued by the Deputy Superintendent Central Jail No.10, Rohini, New Delhi, of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that offence is of grave nature and is against society at large.

4. **Analysis**

Be that as it may, considering the custody period i.e. 06 months and 17 days for which the petitioner has suffered incarceration; the petitioner was nominated as an accused only on the basis of disclosure statement of main accused Raj Narain, who was admitted to regular bail, in addition to the fact that investigation is complete, challan stands presented to Court on 28.11.2024, charges are yet to be framed and total 43 prosecution witnesses have been cited, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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 “**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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the



appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of concession of bail.

5. **DECISION:**

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his 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

04.03.2025

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No