



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

219

CRM-M-62548-2024

Date of decision: 10.02.2025

Premjit Singh @ Prem

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. A.S. Grewal, Advocate for the petitioner.
Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 483 BNSS, 2023 seeking the concession of grant of regular bail in FIR No.409 dated 15.07.2017 under Sections 395 IPC and Section 25 of Arms Act registered at P.S Ratia, District Fatehabad.
2. The Prosecution story set up in the present case as per the version narrated in the instant FIR reads as under :-

“Statement of Atma Ram son of Om Parkash Caste Jatt, resident of Jamana District Hanumangarh, Rajasthan and aged about 20 years. Stated that I am resident of above said address and I am working as Salesman at Liquor UP Shop Desi and English. In the midnight of 14/15-7-17 at about 01:30 AM, I was sleeping alone in the abovesaid liquor shop, then some persons after calling tried to get the door open, but when I don't open the same, then two boys came inside after breaking the iron grill of backside. Out of them, one boy placed pistol on my head (temple) and the second one after slapping on my left ear snatched the keys of shutter and opened the same. After opening of shutter gate, 5/6 boys alighted from one small car and one Balero



Camper type cars both have White colour and they immediately entered in the liquor shop, out of which some boys gave me fist blows and slaps and sit me down at a corner in the liquor shop by covering me with Khes (cloth) and mattress. They looted the liquor kept in the shop, cash kept in the cash box and shirt and Mobile Mark Samsung having SIM No. 99962-23683 They left me in the liquor shop after locking the shutter by closing it. I after going outside in the Dhani from the backside broken grill after taking phone from the Dhani residents called the Contractor Radhey Shyam and informed him about the loot of liquor shop. After sometime, when the Contractors reached at liquor shop, then I checked the liquor shop, then 15 Boses of Liquor bottle, 10 Boses of Liquor Halves, 3 Pet Liquor Pau (1/4th) above said liquor Desi, 2 Boses of Beer, Rs. 5,000- kept in the cash box, Rs. 2,000/- kept in the pocket and Mobile found to be stolen/looted. Then Contractor Radhey Shyam got me admitted for treatment in Govt. Hospital, Ratia, from where the Doctor after providing me first aid referred me to Agroha Medical. I instead of visiting Agroha got my treatment done from a Private Hospital in Fatehabad. Out of the boys who conducted the loot, one boy was wearing Red Colour T-Shirt and Jeans Pant and he was wearing a Murki in one ear, to whom I can recognize if he will come in front of me. All others had covered their faces. The stern legal action may kindly be taken against the boys who have looted liquor, cash and mobile. I have got recorded my statement on Fatehabad Bus Stand, heard and is correct.”

Contentions

On behalf of the petitioner

3. Learned counsel for the petitioner submits that he was on regular bail whereafter on one of the dates i.e 22.03.2021, the petitioner could not appear in Court as he had noted a wrong date as a result, his regular bail was cancelled. He had been consistently appearing before the trial Court and his non-appearance was not intentional. He further submits that in fact, the police authorities have incorporated the name of the petitioner without conducting any investigation and the prosecution has miserably failed to explain as to how there was any connection



of present petitioner with the occurrence of present FIR. It is informed to the Court that the petitioner is in custody since 05.08.2024 and no useful purpose would be served by keeping him behind the bars. He undertakes that the petitioner will surrender before the trial Court and shall join the trial proceedings without any delay or default in future.

4. Notice of motion.

Contentions

On behalf of the State

5. On the asking of the Court, learned State Counsel accepts notice on behalf of the respondent-State, who is not averse to the undertaking given by the petitioner that he will surrender before the trial Court.

6. Heard.

Analysis

7. Be that as it may, considering the facts of the present case and taking note of the fact that the challan in the present case stands presented on 19.12.2017, charges have been framed on 02.01.2018 and out of total 13 PWs, 09 have been examined, 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.

8. 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.”

9. 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

10. 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.



11. 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
manoj

- 1. Whether speaking/ reasoned : Yes /No
- 2. Whether reportable : Yes /No