IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

241 **CRM-M-62949-2024 (O&M)**
DATE OF DECISION: 09.01.2025

VIKASH AND ANOTHER

...PETITIONERS

VERSUS

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ashit Malik, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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SANDEEP MOUDGIL, J (ORAL)

CRM-49611-2024

Application is allowed, as prayed for.

CRM-M-62949-2024

1. **Relief Sought**

This petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioners in Case FIR No. 25 Dated 20.01.2022 registered under Section 346 IPC (Sections 302, 201, 404 and 34 IPC added later on) at Police Station City Kaithal, District Kaithal.

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

> *"To, the SHO, Police Station City Kaithal. Subject: Missing report. Sir, It is submitted that my brother Jitin, aged 28 years, who is unmarried. We are two brothers and our father died about 25 years ago. I am married and*

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have two children. My son is aged 2.5 years and daughter 4.5 years. On 9.1.2022 at about 5.00 PM my brother Jitin left the house without telling anybody on his scooty bearing registration No.HR-08-AA-8734 make Activa, colour red. My brother Jitin who had gone on his scooty was not mentally sound. His description is as follows:- complexion: fair, face long, medium built, height 5'11", aged 28 years, having an injury mark on his right foot. He has done B.A. from Open Board, he was wearing grey colour sweatshirt, blue coloured jeans and blue jeans type shoes. My brother was carrying REDMI black coloured touch screen mobile its mobile number were 9802758440 and 8950514925 IMEI No. of the mobile is 864669044365572. I have been searching for him in our relatives but to no avail till now. I and my brother had no grudge with anybody and nor do I suspect anybody. My brother is missing. Kindly search my brother Jitin. I have annexed the photograph, aadhar card and photocopy of the scooty with this application. Sd/- Applicant Manoj Kumar son of late Sh. Sham Lal, resident of near Hanuman Mandir, Partap Gate, Kaithal, M.No.80032-96320, 98968-59570 dated 20.1.2022 at 16.25..”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioners has argued that the petitioners have been nominated as an accused on the basis of last seen theory, which was pointed out by Deepak at the time of registration of present case. It is further argued that Deepak-PW-3, who has last seen the petitioners in the company Mandu on his scooty, has turned hostile qua the petitioners, as is evident from his deposition dated 06.08.2024 (Annexure P-1).

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.

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Learned State Counsel has prayed for dismissal of the present petition stating that the petitioners are involved in serious allegations but is not in a position to controvert the fact that PW-3 Deepak has turned hostile. He informs the Court that in the present FIR challan stands presented on 25.04.2022, wherein, the prosecution has cited total 32 witnesses and charges have been framed on 24.07.2024.

4. **Analysis**

Considering the fact that it is a case of circumstantial evidence and last seen theory especially when PW-3 Deepak has turned hostile, which is sufficient for this Court to infer that there is every possibility of earning acquittal. Further, it can be culled out that the petitioners have already suffered incarceration of 2 years, 11 months and 05 days and after framing of charges on 24.07.2024, out of total 32 prosecution witnesses only 20 have been examined so far, meaning thereby, the conclusion of trial shall take considerable time 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 petitioners 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:-

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"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

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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 436-A 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

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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 petitioners are directed to be released on regular bail on their furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

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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

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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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