

2025:PHHC:001222



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

222

CRM-M-56389-2024
DATE OF DECISION: 08.01.2025

KULDEEP SINGH ALIAS NIKKA FOUJI
...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Digvijay Nagpal, Advocate for the petitioner(s).

Mr. J.S. Rattu DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

The jurisdiction of this Court has been invoked for the 2nd time under Section 439 Cr.P.C., seeking regular bail to the petitioner in case FIR No.0067 dated 06.05.2024, registered under Section 304 of IPC, 1860 (Section 27 of NDPS Act added later on) at Police Station Jhunir, Tehsil Sardulgarh, District Mansa, Punjab.

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

“Statement of Lachman Singh son of Hamir Singh son of Inder Singh resident of Ramanandi aged about 55 years mobile number 77174-01026 stated that I am resident of above said address and doing agriculture, I have three children eldest one is daughter namely Rajveer Kaur who is married, younger girl to her is Beant Kaur and youngest boy is Dhanveer Singh alias Dhanna both of them are unmarried. Kuldeep Singh alias Nikka Fouji resident of Bhalaike is friend of my son Dhanveer Singh alias Dhanna. He usually keeps coming to my son Dhanveer Singh alias Dhanna and sometimes my son stayed with him. On dated 04.05.2024, time is about

9:30 in the morning; my son told us that he is going to Kuldeep Singh alias Nikka Fouji resident of Bhalaike on the motorcycle of his friend. When my son did not come back to home till the evening of 05.05.2024 then I along with my brother Jugraj Singh went to village bhalaike at the residence of Kuldeep Singh alias Nikka Fouji, time would be around 8'O clock in the evening, the gate of the house was opened and the light of front courtyard was on, then we both went to front courtyard my son Dhanveer Singh alias Dhanna was lying on the cot, when we go close and saw, my son was died and the dead body was bloated. I am pretty sure that death of my son Dhanveer Singh alias Dhanna occurred due to overdose of drug or intoxicant substance given by Kuldeep Singh alias Nikka Fouji. Then we arranged the vehicle and submitted the dead body of my son in Civil Hospital Sardulgarh”

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 and no role whatsoever has been attributed to him. He has placed reliance upon a report dated 20.08.2024 (Annexure P-4) of the Chemical Examiner from which it is abundantly clear that neither any poison nor the drug was detected from the sample.

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. He prays for dismissal of the present petition on the ground that the petitioner is also involved in two other case, meaning thereby he is a habitual offender.

4. **Analysis**

Be that as it may, considering the fact that neither any poison nor drug was detected from the samples as well as the facts that

the petitioner has already suffered incarceration of 7 months and 20 days as of now added with the fact that investigation is complete and after framing of charges on 02.09.2024 out of total 15 prosecution witnesses none have been examined, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal)***

131. 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.

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 the concession of bail.

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

08.01.2025
Sham

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