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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25344-2025
DECIDED ON: 14.05.2025

VISHAL
.....PETITIONER

VERSUS

STATE OF HARYANA
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Balraj Gujjar, Advocate for the petitioner.

Ms. Mayuri Lakhanpal Kalia, DAG Haryana

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SANDEEP MOUDGIL, J (ORAL)

1. Prayer

This is second petition under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in FIR No. 0378 dated 08.11.2023 under Section 302, 34 IPC, 1860 and Section 365, 420, 471, 120-B IPC, 1860 were added later on registered at Police Station: Sarai Khawaja Faridabad, Tehsil and District Faridabad.

2. **Facts**

Facts as narrated in the FIR reads as under:-

"DATE 8/11/2023 To SHO Sahab Police Station Sarai Khawaja Faridabad. Sir Ji, It is requested that I Vinod Kumari Sharma wife of Late Sh. J.K SHARMA (JUGAL KISHOR SHARMA) is resident of 45 OLD FARIDABAD FRIENDS COLONY. I have two sons. Elder son VIKAS SHARMA with his family WITH STAY IN DELHI LAST 14

YEAR. My younger son NITIN SHARMA AGE-30 YEAR OLD resides with me. That my son NITIN had a fight with Vijay Khatik son of Chiranji Lal resident of Barh Mohalla OLD FARIDABAD AND Gayaan (alias Chuja) son of Prakash and Vivek (alias) Aalu son of Dharampal resident of FRIENDS COLONY FARIDABAD and Vishal son of Saroj resident of Santosh Nagar FARIDABAD. My son has not come to home since the evening of 6/11/23. Whom I was searching for. Today I received information that the dead body of a young boy was found lying in Satish Nagar Jhuggi and is in B.K HOSPITAL FARIDABAD. So, upon receiving this information I have gone to the hospital. That I have seen in the DEAD HOUSE. Which is of my son NITIN. I have full suspicion that Vijay Khatik, Gayaan, Vivek, Vishal are behind the murder of my son Nitin. Who have committed murder of my son. That legal action be initiated against them so that truth can be found out. Applicant VINOD KUMARI 08.11.2023 VINOD KUMARI"'

3. <u>Contentions:</u>

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that the present case is based on circumstantial evidence and there is no eye witness in this case and the complete chain of link to connect the petitioner with the alleged commissioning of the offence is missing. It is his further submission that similarly situated co-accused namely Vivek @ Aalu has already been granted concession of regular bail by this Court vide order dated 01.05.2025 passed in CRM-M-22181-2025 (Annexure P-6). Moreso, the investigation in this case is complete as challan stands presented on 24.01.2024 charges stands framed on 05.04.2024, out of 29 prosecution witnesses, only 3 PWs have been examined so far which is sufficient

to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioner.

On behalf of the State

On the other hand, learned State Counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 1 year 6 months and 5 days.

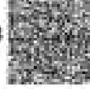
Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner is a habitual offender, as he is involved in one more FIR, however, is not in a position to controvert the fact that the petitioner is at parity with co-accused namely Vivek @ Aalu has already been granted concession of regular bail by this Court.

4. **Analysis**

Considering the facts that the petitioner has already suffered incarceration of 1 year 6 months and 5 days; no overt act has been attributed to the petitioner; co-accused has already been granted concession of regular bail added with the fact that investigation is complete, challan stands presented on 24.01.2024, charges have been framed on 05.04.2024 and out of total 29 prosecution witnesses, only three have been examined so far. This Court is sanguine of the fact that conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind bars for uncertain period, wherein "*bail is a rule and jail is an exception*" and it would also violate the principle of right to speedy trial and expeditious disposal under Article 21 of 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*
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> *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 "***<u>Balwinder Singh versus State of Punjab and Another", SLP (Crl.) No.8523/2024.</u>*** Relevant paras of the said judgment reads as under:-

> *"7. An accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.*
>
> *8. It is not for nothing the Author Oscar Wilde in "The Ballad of Reading Gaol", wrote the following poignant lines while being incarcerated:*
>
> *"I know not whether Laws be right,*
> *Or whether Laws be wrong;*
> *All that we know who be in jail*
> *Is that the wall is strong;*
> *And that each day is like a year,*
> *A year whose days are long."*

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 lend the petitioner in a situation of denial the concession of bail.

5. **Relief:**

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

14.05.2025
anuradha

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