

2025:PHHC:079132



205

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48977-2024 (O&M)
DECIDED ON: 04.07.2025

PARAMJEET KAUR ALIAS PAMMI

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vivek Baghla, Advocate for the petitioner.
Ms. Mayuri Lakhanpal Kalia, DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked for the 3rd time under Section 483 BNSS, 2023 seeking regular bail to the petitioner in case FIR No. 5 dated 08.01.2022 registered under section 370(5), 34 of IPC (Section 81 of JJ Act subsequently added on 15.02.2022), Police Station DLF PH 3rd, District Gurugram.

2. Facts

Facts as narrated in the FIR reads as under:-

“TO, SHO DLF Phase 3 Gurugram I, Umesh Lohia S/o Bishambar Lohia r/o Nathupur U/37 Road DLF Phase 3, Gurugram am residing. I am a taxi driver. Today, I was going to my village Nathupur, Gurugram by my Taxi No. HR55Y- 1214 from Plot Khyala Rajori Garden, Delhi. On reaching Dhaula Kuan, 2 women signaled me to stop my taxi. I stopped my vehicle because I was signaled by the women. Both the women were carrying two kids one in each lap aged about 20-25 days respectively. There was a male member also with

them. They asked me about my destination. I told them that I was going to Shankar Chowk, Gurugram. Thereupon, they asked to leave them at IFCO Chowk, Gurugram. I told them that I would leave them at Shankar Chowk, Gurugram. I asked them to sit in my vehicle. It was my taxi. After some distance from Dhaula Kuan, the two women and the men asked me as to whether I can drop them at Alwar, Rajasthan. I told them I would charge Rs. 3000 and leave them at Alwar, Rajasthan. They told me that they would give Rs. 4000 to me provided I first takes them to Alwar, Rajasthan and drop them at Ghodewala Mandir Raghveer Nagar, Delhi. I agreed to do the same. I took them to Khedki, Dola toll, Gurugram and had CNG filled up in my vehicle. Thereafter, I started for Alwar. They told me to stop at a Chemist Shop on the way because they have to buy milk and bottle for the Children. I stopped the car in the market after crossing Manesar Flyover. The man in the vehicle purchased the milk bottle from the medical store and also milk from the Halwai shop. They were calling amongst themselves as Harjinder Singh, Surinder Kaur and Neha. Meanwhile, one of the women received a telephone call. They were talking amongst themselves that they would reach Alwar within 2 hours. They will not stop overnight After sometime, the women in the car received the telephone again and she told that we will take Rs. 3,00,000. The women in my car told me that they are not going to Alwar. I started back from Manesar Flyover for Gurugram. I had a doubt that they have purchased the kids. I told them that I have to buy some goods from DLF PH 3, Mousari Metro Station, Gurugram. Thereafter, I shall leave them at Delhi. After sometime I stopped the car near Mousari Road, Metro Station, Gurugram and went to the market to buy the goods. I suspected that they have stolen the kids from somewhere. I along with 2 women, man and 2 kids came to the police Children. I stopped the car in the market after crossing Manesar Flyover. The man in the vehicle purchased the milk bottle from the medical store and also milk from the Halwai shop. They were calling amongst themselves as Harjinder Singh, Surinder Kaur and Neha. Meanwhile, one of the women received a telephone call. They were talking amongst themselves that they would reach Alwar within 2 hours. They will not stop overnight After sometime, the women in the car received the telephone again and she told that we will take Rs. 3,00,000. The women in my car told me that they are not going to Alwar. I started back from Manesar Flyover for Gurugram. I had a doubt that they have purchased the kids. I told them that I have to buy some goods from DLF PH 3, Mousari Metro Station, Gurugram. Thereafter, I shall leave them at Delhi. After sometime I stopped the car near Mousari Road, Metro Station, Gurugram and went to the market to buy the goods. I suspected that they have stolen the kids

from somewhere. I along with 2 women, man and 2 kids came to the police”

3. Contentions:

On behalf of the petitioner

At the outset, learned counsel for the petitioner submits that the petitioner is in custody since 22.02.2022 and after framing of charges on 06.08.2023 out of total 46 prosecution witnesses, only 16 have been examined so far. He further submits that investigation in the matter is complete, challan stands presented and nothing is to be recovered from the petitioner, therefore, no useful purpose would be served by keeping the petitioner behind bars.

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 2 years, 9 months and 11 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the allegations against the petitioner are serious of in nature that she purchased three children from the different persons and further and further sold them to the co-accused.

4. Analysis

Considering the custody period undergone by the petitioner i.e., 2 years, 9 months and 11 days and the fact that investigation is complete, challan stands presented on 06.04.2022, charges have been framed on 06.08.2023 and out of total 46 prosecution witnesses, only 16 have been examined so far, which is sufficient for this Court to infer that conclusion of trial shall take considerable time, therefore, this Court is of the view that 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*

*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 “Balwinder Singh versus State of Punjab and Another”, SLP (Crl.) No.8523/2024. 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.”*

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

04.07.2025
Meenu

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