

Vinod vs State Of Haryana on 6 September, 2024

Author: Sandeep Moudgil

Bench: Sandeep Moudgil

Neutral Citation No:=2024:PHHC:116922

CRM-M-37504-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-37504-2024 (O&M)
DATE OF DECISION: 06.09.2024

VINOD

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashit Malik, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

CRM-30927-2024 This application under Section 528 BNSS has been filed for exemption from filing certified copies of FIR No.499 dated 19.11.2022, under Sections 148, 149, 323, 307 IPC, 1860 and under Section 25 of Arms Act, 1959, Police Station Sadar Sonapat, District Sonapat. Subsequently during the investigation sections 148, 149 and 307 IPC were deleted and Sections 302, 34 IPC and section 27 of the Arms Act were added, impugned order dated 17.7.2024 and Annexures P-1 to P-3 as well as exemption from filing true typed copies of impugned order dated 17.7.2024 and Annexures P-1 to P-3.

For the reasons recorded in the application, the same is allowed and he is exempted from filing the above-said copies of the documents.

Main case

1. Relief Sought The jurisdiction of this Court under Section 483 of BNSS has been invoked seeking the concession of regular bail for the petitioner in 1 of 7 Neutral Citation No:=2024:PHHC:116922 CRM-M-37504-2024 FIR No.499 dated 19.11.2022, under Sections 148, 149, 323, 307 of the IPC

and Section 25 of the Arms Act, 1959 registered at Police Station Sadar Sonapat, District Sonapat, subsequently during the investigation Sections 148, 149 and 307 IPC were deleted and Sections 302 and 34 of the IPC and Section 27 of the Arms Act was added.

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

'To, the SHO, Police Station Sadar Sonapat. Sir, It is submitted that I, Parveen son of Hukam Singh, am a resident of village Harsana Kalan. Today i.e. on 19.11.2022 we had built the 'baar' of our fields in the morning and when in the evening at 4.00 P.M. I and my wife Meenu reached our fields we found the 'baar' removed. When we started rebuilding our 'baar' then Naresh son of Mahabir started abusing us from the roof of his house and came down and again started removing the 'baar'. Then my brother Jai Kishan son of Hukam Singh reached the spot and tried to make Naresh understand. In the meantime family members of Naresh i.e. Vinod and Dinesh sons of Mahabir and wives of Naresh and Vinod came there and started fighting. At that time Naresh son of Mahabir fired at my brother Jai Kishan with the intention to kill him which hit in his stomach. Vinod son of Mahabir gave a lathi blow on my head which resulted in a deep injury on my head. In the meanwhile my brother Hari Kishan son of Hukam Singh reached there who took us both to the hospital. Strict legal action be taken against the above mentioned accused..."

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. He refers to the Medico Legal Report dated 30.11.2022 (Annexure P-2) which was conducted after 11 days of the occurrence to show that the injury on the 2 of 7 Neutral Citation No:=2024:PHHC:116922 CRM-M-37504-2024 head attributed to the petitioner is declared to be simple in nature, therefore, offence under Section 307 cannot be attracted qua him and no other role has been attributed to him of any nature. He has further argued that the antecedents of the petitioner are clean. He also submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 39 Prosecution Witnesses, only six have been examined yet.

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. According to which, the petitioner is behind bars for 1 year, 7 months and 18 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner gave an injury on the head of the injured person but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 16.02.2023 and charges stand framed on 22.03.2023.

4. Analysis From the above-mentioned, it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 1 year, 7 months and 18 days; antecedents of the petitioner are clean,

meaning thereby he is not a habitual offender and injury attributed to the petitioner has been declared simple in nature also no other role has been attributed to him. Further, as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable 3 of 7 Neutral Citation No:=2024:PHHC:116922 CRM-M-37504-2024 doubt, whereas in the instant case, challan stands presented on 16.02.2023 charges stand framed on 22.03.2023 out of 39 prosecution witnesses, only six have been examined yet which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner 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:-

"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 4 of 7 Neutral Citation No:=2024:PHHC:116922 CRM-M-37504-2024 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 5 of 7 Neutral Citation No:=2024:PHHC:116922 CRM-M-37504-2024

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.

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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

06.09.2024 anuradha Whether speaking/reasoned Yes/No Whether reportable Yes/No 7 of 7