



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-2002-2024 (O&M)
Date of Decision :July 23, 2024

DARA SINGH

.....Appellant

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Amit Chaudhary, Advocate
for the appellant.

Mr. Rajesh Gaur, Addl.A.G., Haryana.

Ms. Ashu Rana, Advocate,
for respondent no.2.

KULDEEP TIWARI, J.(Oral)

1. Through the instant appeal, challenge is thrown to the order dated 10.05.2024, vide which regular bail application filed by the appellant under Section 439 Cr.P.C, in case FIR No.197, dated 21.04.2020, under Sections 120-B, 370, 323 and 302 IPC, and under Section 3 of the SC/ST Act, registered at Police Station City Faridabad, District Faridabad, was dismissed by the learned Additional Sessions Judge, Fatehabad (hereinafter, referred as 'the learned trial court concerned').

SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANT

2. Learned counsel for the appellant in order to throw challenge

to the impugned order submits that the learned trial court concerned, has totally failed to appreciate the scope and object of Section 319 Cr.P.C. while declining the relief of regular bail to the appellant.

3. He further submits that the appellant was found innocent after a detailed investigation, by the prosecution agency, as he was not found present on the spot.

4. He further submits that the CCTV footage which was submitted by the complainant himself to the investigating officer, reflected that the appellant was not present at the spot, and on the basis of which the appellant was declared as innocent.

5. He in addition submits that the allegations in the FIR, are in fact suffered with concoctions and simply because of being brother of the main accused-Kuldeep Singh alias Sonu, present appellant has been involved in instant FIR.

ALLEGATIONS AGAINST THE APPELLANT

6. The prosecution agency was set into motion on a complaint made by one Palvinder Singh. The relevant extract of the FIR reads as under:-

“Statement of Palwinder Singh S/o Kulwant Singh S/o Darshan Singh, Mohalla Gurunanak Pura, Fatehabad aged 22 years mobile No. 9728228888 stated that I am resident of above mentioned address and doing B.A. or with study am also doing the work of transport. Today dated 21.4.2020 at about 9.00 AM as usual I and my father Sh. Kulwant Singh on. our own-own vehicle. I am on my motorcycle and my father is on Activa Scoty No. HR22N-8807 were going ahead of me and were going at Auto Market Fatehabad on transport soap and when we reached Sandhu Hospital, Street no.1 Gurunanak Pura Mohalla, Fatehabad then a Tractor No. HR22G-3509 Sonalika was standing in front of Sandhu Hospital and on the driver seat Sonu S/o Gogi resident of Gurunanakpura Mohalla was sitting. At the same time after seen my father coming on scooty Sonu started his tractor and with intention to kill deliberately took his tractor on wrong side and run over on the Scooty of my father and due to this accident my father come below the tractor and Sonu intentionally to kill my father run

over with the tractor after moving the tractor on my father 2-3 times. Then I raised alarm people came out from their houses after seen Sonu alighted from the tractor and brother of the Sonu, Dara Singh came with the motorcycle and on that motorcycle Sonu fled away alongwith Dara Singh from the spot. Thereafter arranging the vehicle I got admitted my father for treatment in General Hospital, Fatehabad and doctor after giving first-aid to my father referred him to PGI Rohtak due to receiving of many injuries. Then I got admitted my father in Medicity Hospital, Hisar for better treatment. Dara Singh and Sonu by hatching a conspiracy with each other, with intention to kill my father Kulwant, gave injuries by running tractor on him. The grudge is that we both are neighbours and since long time we are having altercation with each other. Strict legal action be taken against them. I have got recorded my statement in front of my brother Kuldeep Singh. Heard, which is correct. Sd/- Ranjit Singh.”

7. What reflects from the perusal of aforesaid FIR, is that earlier deceased Kulwant Singh, was admitted in the civil hospital citing the injuries suffered by him in a road side accident. However, on the basis of the allegations as alleged by the complainant(*supra*), investigation was carried out, and a final report was filed only against three persons on dated 16.07.2020, whereas the present appellant was found innocent. Thereupon charges were framed on dated 07.07.2023, *qua* the above mentioned three persons. The prosecution examined two prosecution witnesses, whereupon, the complainant reiterated his version as mentioned in the FIR and, thereupon an application was preferred by the prosecution under Section 319 Cr.P.C. which was subsequently allowed, vide order dated 17.11.2022. The appellant herein, having aggrieved with the order (*supra*), preferred a criminal revision petition (CRR-3402-2023) before this Court. During the pendency of the above revision petition, a co-ordinate bench vide order dated 03.02.2023, passed the following order:-

“Counsel for the petitioner has referred to paragraph 7 of the impugned order whereas it has been specifically mentioned that after the alleged occurrence, the petitioner-Dara Singh had brought motorcycle and made Sonu absconded from the spot on his own vehicle.

Notices served upon the official respondent(s) through the State's counsel.

Issue notice to the private respondent No.2 returnable for 03.08.2023. Within four weeks from today, the petitioner to take steps for the process of service, if not already taken.

In the meantime, the petitioner is permitted to appear through counsel before the trial Court subject to the condition that he shall not claim any prejudice in this regard in any Court and shall not seek adjournment before the trial Court.”

8. In pursuance of the directions (*supra*), the appellant caused appearance, which reflects from the *zimni* order dated 09.03.2023, passed by the learned trial court concerned.

9. Finally, the above criminal revision petition was dismissed by the co-ordinate bench vide judgement dated 21.03.2024, and thereupon, the appellant was taken into custody by the learned trial court concerned, on dated 24.04.2024, and since then he is behind bars.

SUBMISSIONS OF THE LEARNED COUNSEL FOR RESPONDENT NO.2/COMPLAINANT

10. Upon notice in the instant appeal, learned counsel for the complainant has caused appearance and has filed an application bearing CRM-28985-2024, for placing on record certain documents, which is allowed, and same are taken ordered to be taken on record as Annexures R-1 to R-5, subject to all just exceptions.

11. While referring to the disclosure statement of the co-accused-Kuldeep Singh alias Sonu, learned counsel for respondent no.2/complainant submits that in fact the present appellant is one of the conspirators, and he helped the main accused to run away from the spot, therefore, he is not entitled to seek the relief of regular bail.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

12. On the other hand, learned State counsel, on instructions imparted to him by the police official concerned, informs this Court that

in the instant matter, after summoning of the present appellant, fresh charges against him and other co-accused were framed on dated 07.07.2023, and out of total 28 prosecution witnesses cited by the prosecution, only 2 have been examined so far.

13. He has also placed on record a custody certificate *qua* the appellant, which is taken on record, which reflects that the present appellant has suffered incarceration of about 02 months and 19 days as on today, and, he is not involved in any other criminal case. However, he submits, on instructions, that the petitioner is involved in one more criminal case bearing FIR No.518, dated 26.10.2020, under Section 285, 427 and 34 IPC and under Section 25 and 27 of the Arms Act, 1959, (Section 34 IPC deleted and Section 120-B IPC added later on), registered at Police Station City Fatehabad, in which the present appellant has been enlarged the concession of anticipatory bail.

ANALYSIS

14. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant appeal, it is deemed imperative to capture an overview of some significant legal propositions.

15. “*Bail is the Rule and Jail is an Exception*”. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled “***State of Rajasthan V. Balchand alias Baliay***”, 1977 AIR 2447, 1978 SCR (1) 535. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of

India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

16. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

17. In “***Gurbaksh Singh Sibbia v. State of Punjab***”, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out by the Hon’ble Supreme Court with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476 (479, 480) that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy' cases observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504 (SB) it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the

Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

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29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail".

30. In American Jurisprudence (2d, Vol. 8, page 806, para 39) it is stated :

"Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

18. Also, in ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh", 1978 AIR (Supreme Court) 429***, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

"9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation

of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice - to the individual involved and society affected.

11. *We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.*

12. *A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.*

13. *Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of*

desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal."

FINAL ORDER

19. This Court has considered the submissions made by learned counsel for all the parties concerned.

20. It is not under dispute that the appellant was earlier declared as innocent by the investigating agency, after examining the CCTV footage, supplied by the complainant himself.

21. It is not under dispute that the appellant has been summoned under the provisions of Section 319 Cr.P.C. and the basic object thereof, is to cause the summoned person to face trial alongwith other co-accused, who have already been sent to trial by the prosecution.

22. Considering the allegations, and the fact that the appellant has been summoned under Section 319 Cr.P.C. the judicial custody of the appellant is totally unwarranted. Therefore, finding merit in the instant appeal, this Court deems it appropriate to accept the same.

23. Consequently, the order dated 10.05.2024 (*supra*), passed by the learned Additional Sessions Judge, Fatehabad, declining the relief of regular bail, is hereby set aside and the instant appeal is **allowed**.

24. The appellant is ordered to be released on regular bail, on furnishing of bail bond and surety bond to the satisfaction of concerned

Chief Judicial Magistrate/trial Court/Duty Magistrate.

25. However, it is clarified that if the present appellant extends any threat to the prosecution witnesses, in that eventuality the State is at liberty to approach the appropriate court by making an appropriate motion.

26. It is further clarified that, if the appellant is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

27. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present appeal only.

July 23, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No