

2024-PHHC-165580



221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30981-2024

Date of Decision: 11.12.2024

Usman alias Mohammad Usman

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Tushar Gautam, Advocate for the petitioner.
Mr. Bhupinder Singh, DAG, Haryana.
Mr. Vinay Kumar Pandey, Advocate for the complainant.

KULDEEP TIWARI, J. (ORAL)

1. The gravamen, which are encapsulated in the instant petition is the long incarceration suffered by the petitioner i.e. more than 1 year and 3 months as on today, therefore, the petitioner has filed the instant petition, seeking the relief of regular bail in case FIR No.158 dated 19.07.2023 under Sections 148/149/323/506/302 of IPC, 1860 (Section 302 of IPC, was added later on) registered at Police Station Pinangwan, District Nuh.

2. The prosecution agency was set into motion on a statement suffered by the complainant Sahid s/o Kasam (brother of the deceased) wherein, he alleged that the petitioner along with other co-accused caused injuries to his deceased brother Sakul. In pursuance of his statement, earlier the FIR was registered under Sections 323/148/149/506 of IPC. The injured, **who is brother of the complainant**, suffered injuries at the hands of the accused mentioned in the FIR, unfortunately died on dated 07.09.2023 which led the prosecution agency to invoke the provision of Section 302 IPC in the

instant FIR. The relevant extract of the statement of the complainant reads as under:-

“That on 19.07.2023, the complainant Sahid son of Kasam, came to the Police Station and presented a complaining alongwith copy of MLR dated 16.07.2023 of Saikul son of Azad, in which two injuries were shown. The complainant stated that on 16.07.2023, accused Jameel son of Chota, Tarif, Tasleem sons of Jameel, Usman son of Attar Khan, Aarif son of Usman, Mosim @ Musa son of Usman, Aamir son of Ramjan, Imran son of Sahid, Saddik son of Sirdar and 7-8 unidentified persons, kidnapped his minor son Sahil, aged about 15 years and took him in jungle. The accused beat his son Sahil and alleged that he had committed theft of mobile phone. The above named accused forced his son Sahil, to admit the theft of mobile phone and prepared a video of his statement. Thereafter, accused took his son to their house and informed him on telephone that his son Sahil had committed theft of mobile. Thereafter, he, his cousin brother Saikul son of Ajad (since deceased), reached at the house of accused at around 6:00 PM. All the accused were present there armed with cudgels, iron rod, sticks, farsa etc. The accused attacked upon them. Accused Usman and Saddik caught hands of Saikul. Accused Jameel gave a cudgel blow on the head of Saikul. Accused Tarif, gave a farsa blow from reverse side on the head of Saikul. Accused Aamir gave iron rod blow on the head of Saikul. Thereafter, Saikul became unconscious and fell down. He and his son Sahil ran from there and reached at their house. The accused chased them and intruded their house and beat them. On hearing noise, Fakruddin son of Abdul Sattar, Sher Mohd. Son of Jaikam and some other neighbours reached there and saved them from the clutches of the accused. Thereafter, accused went on the roof of their houses and pelted stones upon his house. Then police was informed by making call on phone No. 112. On seeing the police party, accused stopped the occurrence. Saikul was taken to CHC, Punhana and from there, he was referred to Medical College, Nalhar. After some

time, Saikul was referred and he was under treatment in PGIMS, Rohtak.”

3. A perusal of the above FIR reflects that the petitioner is allegedly a person, who caught hold the hands of deceased Sakul, whereas, the other co-accused inflicted injuries upon him.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE PETITIONER

4. Learned counsel for the petitioner in the asking for the relief (supra), submits that there is no allegation that the petitioner has caused any injury to the deceased, though he is stated to have been caught hold the hands of the deceased while other co-accused inflicted injuries upon the deceased. He further submits that the petitioner has suffered incarceration of more than 1 year and 3 months as on today, and he is a man of clean antecedents. Finally, he submits that the trial is yet to begin in the instant case, therefore, the conclusion of trial would take a long time.

.SUBMISSIONS BY THE LEARNED STATE COUNSEL AND THE LEARNED COUNSEL FOR THE COMPLAINANT

5. The prayer of the petitioner seeking regular bail, has been vociferously opposed by the learned State counsel assisted by the learned counsel for the complainant. Learned counsel for the complainant submitted that it is the petitioner, who infact, facilitated the other co-accused to cause injuries to the deceased, and had he not caught hold the hands of the deceased, the other co-accused would not be in a position to cause injuries, therefore, he is one of main accused, who actively participated in the commission of the instant crime.

6. Learned State counsel, after having instructions from the quarter

concerned, informs this Court that in the instant case the final report *qua* the petitioner was filed on dated 18.10.2023, charges were framed on dated 22.02.2024 and there are total 20 prosecution witnesses out of which only one witness has been examined till date, and thereafter, co-accused Tarif and Taslim were arrested and challan *qua* them was filed on 14.10.2024 and 11.11.2024, respectively.

7. This Court has considered the rival submissions of the learned counsel for the parties concerned and is of the view that the instant petition is amenable to be allowed.

ANALYSIS

8. 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 petition, it is deemed imperative to capture an overview of some significant legal propositions.

9. “*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.

10. 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.

11. 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."

12. 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.”

13. It is not under dispute that the allegation levelled against the petitioner is that he caught hold the hands of the deceased, however, the veracity of such allegation is to be evaluated by the learned trial Court concerned at the apt stage of the trial. Considering the days of incarceration suffered by the present petitioner and the stage of the trial, this Court deems it fit and appropriate to extend the benefit of regular bail to the petitioner. Therefore, the present petition is **allowed**.

14. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

15. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

11.12.2024
Ajay-1/Parveen kumar

(KULDEEP TIWARI)
JUDGE

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