

CRA-S-597-2023 (O&M)

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

235

CRA-S-597-2023 (O&M)

Date of Decision : November 16, 2023

ANJEET

-Appellant

V/S

STATE OF HARYANA

-Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Deep Kanwal Singh, Advocate
for the appellant.

Mr. Chetan Sharma, D.A.G., Haryana.

KULDEEP TIWARI, J.

CRM-9541-2023

1. As prayed for, the instant application is allowed.

CRM-9542-2023

2. Considering the valid and good reasons, as recorded in the application for condoning the delay of 201 days, the application is allowed.

3. Delay of 201 days is condoned.

CRM-9543-2023

4. As prayed for, the instant application is allowed. Annexures A-1 to A-3 are taken on record.

CRA-S-597-2023

5. Through the instant appeal, the appellant assails the order dated 06.06.2022, whereby, the learned Additional Sessions Judge, Hisar, declined to grant the relief of regular bail to the appellant, in FIR No.153 dated 28.03.2021, under Sections 302, 307, 506, 149 of the Indian Penal Code

CRA-S-597-2023 (O&M)

2

(hereinafter referred to as the 'IPC'), registered at P.S. Azad Nagar, Hisar.

2. The prosecution story is rooted in the statement of one Inder Singh (hereinafter referred to as the 'complainant'). For ready reference, the relevant extract of his statement, as narrated in the order (supra) of the learned Additional Sessions Judge, Hisar, is extracted hereinafter:-

"...Inder Singh, brother of injured was present there, got recorded his statement to the police, wherein, he alleged that he and his brother Ramesh run a hotel under the name of R.K. Restaurant, near Reliance Petrol Pump, Rajgarh road, Hisar. On 27.03.2021 at about 7.30 p.m. he alongwith Ramesh and other employees of Hotel were present at the Hotel. In the meantime a Bolero No. HR-39B-1600 came there and 6-7 persons from that Bolero came inside the Hotel and asked for drink but he and his brother have not allowed them to enjoy liquor in the Hotel. After that, they purchased some eatable material and started drinking in the Bolero. After some time, they came in the Hotel and ordered for dinner. Anjit son of Rambhaj, Karamjeet son of Virbhan and others enjoyed the dinner and thereafter his brother Ramesh demanded bill. But they abused him in the name of their caste and asked how they can demand the bill. Thereafter, all the persons came out and brought Dandas and iron rods from the Bolero and attacked upon his brother Ramesh and inflicted injuries upon his fore-head, eyes, hand, nose and chest. When they tried to save his brother, All them attacked upon him but he escaped from there. The workers of Hotel also received some injuries. Anjit and Karamjit also sustained injuries in that fight. He came to know that name of other persons were Karambir of village Dhiranwas and Pawan Bishnoi of village Kajal Heri. After causing the injuries all the assailants went away with their weapons while threatening to kill them as and when they will get the chance. After that, his brother Ramesh was shifted to General Hospital, Hisar."

3. The record, as available before this Court, makes revelations that initially a case was registered under Sections 148, 149, 307, 323, 452 and 506 of the IPC, and, Section 3 of the SC/ST Act. However, during the course of investigation, the demise of injured Ramesh occurred, which led to

incorporation of Section 302 of the IPC in the case.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

4. The learned senior counsel appearing for the appellant, in his asking for the hereinabove extracted relief, had made the following submissions:-

(i) Though name of the appellant surfaces in the FIR, however, no specific role has been assigned to him therein;

(ii) The appellant has clean antecedents, as he is not involved in any other criminal proceedings;

(iii) The appellant was arrested on 31.03.2021, whereupon, he was put behind bars and as on today, he has undergone incarceration of approx. 2 years and 8 months;

(iv) Since the trial is yet at midway, therefore, it would take a long time to conclude;

(v) Complainant, who is the sole eye-witness and who was examined as PW-3, during trial, did not support the prosecution case, rather turned hostile;

(vi) Co-accused Rattan Singh has already been granted bail by the learned trial Court concerned, vide order dated 25.05.2022 (Annexure A-3).

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. Per contra, the learned State counsel though has opposed the grant of the asked for relief (supra), however, he does not dispute the factum qua period of incarceration suffered by the appellant. He has submitted that out of total 24 witnesses, as cited by the prosecution, 12 witnesses have been examined, while one witness has been given up and now the case is fixed for

examination of prosecution witnesses.

ANALYSIS

6. *“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 Baliy”, 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.

7. 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.

8. In **“Nikesh Tarachand Shah V. Union of India”, (2018) 11 SCC 1**, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out 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 Cal 476, 479, 480 : 25 Cri LJ 732] 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 All 504 : 33 Cri LJ 94] 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. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will 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.

28. Coming nearer home, it was observed by Krishna Iyer, J., in *Gudikanti Narasimhulu v. Public Prosecutor* [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. In *Gurcharan Singh v. State (Delhi Administration)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)

“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, Volume 8, p. 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

CRA-S-597-2023 (O&M)

7

validity or as necessarily justifying the grant or refusal of bail.”

9. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

10. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant appeal is amenable for being accepted.

11. The reason for forming the above inference emanates from the factum that though the appellant has been nominated as an accused in the FIR, however, no specific role has been attributed to him. Moreover, upon a specific query being posed to the learned State counsel, as to whether the prosecution has cited any other eye-witness, except the complainant, as a witness or not, he could not make any affirmative response thereto, rather made a negative response by stating that except the complainant, all other

CRA-S-597-2023 (O&M)

8

witnesses are official and formal witnesses.

FINAL ORDER

12. Considering the hereinabove made discussion, especially the fact that (i) the appellant is not involved in any other criminal case, (ii) the trial is not likely to conclude anytime soon, (iii) the complainant has turned hostile, and (iv) the period of incarceration suffered by the appellant as under-trial, this Court deems it appropriate to allow the instant appeal and to grant the concession of regular bail to the appellant, at this stage. Therefore, without commenting upon the merits and circumstances of the present case, the present appeal is **allowed**. The appellant is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

13. However, anything observed hereinabove shall not be construed to have any bearing on the outcome of the trial, nor the learned trial Judge concerned shall be influenced by the observations made hereinabove, as this order is meant for deciding the present appeal only.

November 16, 2023
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(KULDEEP TIWARI)
JUDGE

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