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2023:PHHC:072005

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-16612-2023
DECIDED ON:12.05.2023**

NASEEB KHAN**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM : HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present : Mr. Nagar singh, Advocate for Mr. Nishant Raj Ghangas, Advocate
for the petitioner.

Mr. Gurbir Singh Dhillon, A.A.G. Haryana.

SANDEEP MOUDGIL, J. (Oral)

1. This is the second petition under Section 439 Cr.P.C filed by the petitioner for grant of regular bail in FIR No.270 dated 30.06.2021 registered under Sections 279/304-A IPC (Section 302 of IPC added later on) and Sections 279/304-A were deleted, registered at Police Station Industrial Sector-29, District Panipat.

2. The contents of the FIR reads as under:-

“To the SHO, Police Station 29, Panipat, it is requested that I Naseeb Khan son of Sh. Jagadish, resident of village Jajwan, District Jind, now resident of village Kurana, District Panipat. I have a shop of welding in village Kurana and wife Zarina suffering from abdomen ache. On 30.06.2021, I alongwith my wife in car bearing registration No.HR-2021-TR-5377 A/F was going from Kurana to Panipat Highway village Sewah some ahead of canal, Higher Power line, Railway Bridge, my wife became nervousness and vomiting came, my wife asked to stop car, then I stopped the car inside the road, my wife stepped out from the car and started going on feet. in the meantime, a truck came from Rohtak

side in very high speed, rash and negligent manner and directly hit my wife, due to said accident my wife fell down on road and the said truck crushed my wife and some other vehicle also crossed over his wife. I could not note the number of said truck. My wife had died at the spot.”

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case urging that he was initially the complainant but later on he was made an accused on the basis of the statement suffered by Ali Nawaj, father of the deceased for the commissioning of offence under Section 302 of IPC. He further contends that the present FIR has been lodged after a delay of more than 40 days from the alleged occurrence.

4. Learned counsel for the petitioner further submits that the petitioner is in custody since 16.08.2021, wherein challan stands presented; charges framed and the trial is at the stage of prosecution witnesses, and no specific role has been attributed to the petitioner, on the alleged date of occurrence petitioner was taking his wife to the doctor after she complained of stomach ache and after travelling for few metres his wife started feeling uneasy and he stopped his car by roadside and his wife came out of the car and started walking, then truck coming from Rohtak side being driven at a very high speed, rashly and negligently, directly hit his wife, leading to her death on the spot.

5. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, he has suffered incarceration of 1 year, 8 months and 24 days. He vehemently opposes the prayer made in the present petition stating that the petitioner has intentionally pushed his wife in front of the truck and the allegations against the petitioner are very serious in nature, therefore, he does not deserve the concession of regular bail at this stage.

6. Heard counsel for the respective parties at length.

7. While dealing with the issue of grant of bail, this court is of the view that deprivation of liberty is punishment unless it is required to ensure that an accused person would stand his trial when called upon and therefore, it owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. The underlined object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for me to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an under trial person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. Moreover, the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. The detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgement of apex court in ***"Dataram Singh v. State of Uttar Pradesh and another, (2018) 3 SCC 22"***

8. Further reliance can be placed upon the decision of Apex court titled as ***"Mahipal v. Rajesh Kumar alias Polia And Another, (2020) 2 SCC 118"***, a case where the offence committed was under Section 302 of IPC, trial was

pending before the Sessions Court and the bail application filed by the

respondent was rejected by the learned Additional Sessions Judge but was subsequently allowed by the High Court, the following pertinent observations have been made :

"12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. XX XX XX XX XX XX XX XX XX

14. The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of

individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."

9. Considering the fact that the present FIR has been lodged after a delay of more than 40 days by the father of the deceased; custody period suffered by the petitioner so far i.e., 1 year, 8 months and 24 days and he is not involved in any other case of any nature, meaning thereby, he is not an habitual offender; there is no eye witness to the alleged occurrence, wherein trial is likely to move at snail pace, custodial interrogation of the petitioner is not required; nothing is to be recovered from the possession of the petitioner; this Court is of the view that no useful purpose would be served by keeping the petitioner behind the bars.

10. In view of the afore-said discussions as well as the judgment of the Apex Court rendered in the cases of Data Ram's (supra) and Mahipal's (supra) discussed herein above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

11. The present petition is, hereby, allowed in the afore-said terms.

(SANDEEP MOUDGIL)
JUDGE

12.05.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No