

2023:PHHC:102755

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216 CRM M-18501 of 2023
Date of Decision: 31.07.2023

Amit Kumar ...Petitioner

Vs

.

State of Haryana ...Respondent

CRM-M-24262-2023 (O&M)

Dinesh Petitioner

vs.

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Aditya Sanghi, Advocate
for the petitioner in CRM M-18501 of 2023.

Mr. Rahul Vats, Advocate
for the petitioner in CRM-M-24262-2023.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Sandeep K. Yadav, Advocate
for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose of above mentioned two bail petitions, whereby, the petitioners have prayed for grant of concession of regular bail to them in a trial arising out of FIR No. 3 dated 08.01.2023 under Sections 148, 149, 323, 325, 307, 120-B, 506 and 216 of IPC and Section 25 of Arms Act, 54 of 1959, Police Station Ateli, District Mahendergarh, Haryana.

2. As per the case of the prosecution, the FIR in the present case was got registered by Vijay Singh complainant by alleging that on 07.01.2023, he alongwith Attar Singh and Dharampal were sitting in the plot of Attar Singh and Attar Singh had got a registered sale deed executed in his favour in December 2022. Attar Singh told them that on 06.01.2023 Shishpal Sarpanch and Rajpal son of Dharampal had come to his house and Shishpal threatened him that he should not go to the plot in question, regarding which, he had a registered sale deed in his favour and in case he went there, he would be killed. Attar Singh got a call from Rajender, who inquired about the whereabouts of Attar Singh and Attar Singh informed him that they were sitting in the plot. On this Rajender Singh also came there and told them that while he was coming from his shop, he had noticed two Bolero, one Creta and two Swift cars, in which, several persons were present. On hearing this, Attar Singh, immediately dialed No. 112 and called the police. At about 11.50 a.m. on 07.01.2023, two Bolero, one Creta and two Swift cars, in which, 25/30 boys were sitting armed with lathi, danda and iron rod and country made pistol came at the plot and attacked on Attar Singh, Dharampal and Rajender with an intention to kill them. Rajpal gave a blow with rod on the head of Rajender whereas Sanjay and Dharmender attacked on the leg of Attar Singh with a rod. Sonu Surani and Anil Mandi also attacked Dharampal with lathi and danda and all other boys also caused injuries to the three

injured indiscriminately. On hearing noise, Naresh son of Lakhi Ram, Mahipal son of Mainpal and Deepak son of Virender Singh also reached there and saved them from the assailants. While leaving, they extended threats to the injured and in the meantime, police reached at the spot, but by that time, the assailants had already fled from the spot. With these broad allegations, FIR in the present case got registered by the complainant.

3. As per the prosecution, after receiving the medical record of Rajender and Attar Singh, both the injured, the offence under Section 325 IPC was added and after recording the statement of Rajender under Section 161 Cr.P.C., the offence under Section 120-B IPC was also added. During the course of investigation, the injuries suffered by Rajender was declared to be dangerous to life, which led to addition of the offence under Section 307 IPC.

4. Learned counsel appearing on behalf of Amit Kumar (petitioner in CRM M-18501-2023) submits that even though the petitioner has been named in the present FIR, yet, no specific injury has been attributed to him. It has been alleged that the petitioner alongwith others had attacked Dharampal, injured with lathies and dandas.

5. On the other hand, learned counsel appearing on behalf of Dinesh (petitioner in CRM M-24262-2023) submits that the

petitioner was not named in the present case and later on, he has been falsely involved only on the basis of suspicion.

6. Learned counsel for the petitioners submit that in fact the complainant had concealed correct facts, while lodging the FIR (Annexure P-2) in the present case. In fact, Sanjay @ Bheru, co-accused entered into an agreement to sell dated 04.01.2023 (Annexure P-3) with Manish wife of Yashpal (co-accused) regarding a plot situated at village Uninda, Tehsil Ateli Mandi. Still further, a sum of Rs. 2,00,000/- was also paid out of total sale consideration of Rs. 5,00,000/-. On 07.01.2023, the labourers were hired by the accused to construct a tin shed over the plot in question. At about 11.30 a.m. on 07.01.2023, the complainant side including Attar Singh, Dharampal, Rajender, Ashok, Naresh, Mahipal and Deepak etc., who were carrying axes, lathies and spade etc., started beating the labourers and the co-accused of the petitioner. Consequently, on the basis of the statement made by Sanjay, co-accused, FIR No. 4 dated 09.01.2023 under Section 148, 149, 323 and 506 IPC, Police Station Ateli (Annexure P-4) was ordered to be registered against Attar Singh, Dharapal and Rajender, all the three injured and their seven other accomplices. Learned counsel further contend that in fact the complainant party in the present case was the real aggressor and had caused serious injuries to the co-accused of the petitioners. Apart from that, even from a perusal of FIR No. 3 (Annexure P-2) in the

present case, it is evident that as per the police report, there was a fight between two parties, however, the police registered the FIR against the petitioner and his co-accused in the first instance. Learned counsel further contend that the origin and genesis of the occurrence and the material facts had been suppressed by the complainant side and rather the complainant side was the real aggressor and want to usurp the property of the accused side. Even the injury, which attracted the offence under Section 307 IPC, is not attributed to the present petitioners. Learned counsel for the petitioners further contend that Amit Kumar (petitioner) was in custody since 21.01.2023 whereas Dinesh (petitioner) was in custody since 20.01.2023 and, thus, their custody would serve no meaningful purpose. Learned counsel further contend that the challan in the present case was presented before the competent Court on 23.03.2023 and the next date of hearing before the learned trial Court is fixed on 03.08.2023 for framing of charges. Apart from that, the prosecution had cited 23 witnesses in the final report under Section 173 Cr.P.C. and the conclusion of the trial may take quite a long time.

7. On the other hand, learned State counsel has vehemently opposed the prayer made by the petitioner on the ground that the petitioners alongwith their co-accused had opened murderous assault on the three injured and specific roles were assigned to both the petitioners. Learned State counsel further submits that six other cases

have been registered against Amit @ Sonu, petitioner whereas one more case has been registered against Dinesh @ Gaurav, petitioner. However, it is not in dispute that in most of the cases, the petitioners are on bail.

8. I have heard learned counsel for the parties and perused the record.

9. The Hon'ble Supreme Court has held in the matter of **Sanjay Chandra VS. C.B.I. 2011(4) RCR Criminal 898** as follows:-

20. In Moti Ram v. State of M.P., (1978)4 SCC 47, this Court, while discussing pre-trial detention, held : "14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

*21. The concept and philosophy of bail was discussed by this Court in **Vaman Narain Ghiya v. State of Rajasthan, 2009(1) RCR (Criminal) 473 :2009(1) R.A.J. 142 : (2009)2 SCC 281**, thus:*

"6. "Bail" remains an undefined term in Criminal Procedure Code. Nowhere else has the term been statutorily defined. Conceptually, it continues to

be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression "bail" denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb "bailer" which means to "give" or "to deliver", although another view is that its derivation is from the Latin term "baiulare", meaning "to bear a burden". Bail is a conditional liberty. Stroud's Judicial Dictionary (4th Edn., 1971) spells out certain other details. It states :

"... when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by lawailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed that is to say, set at liberty until the day appointed for his appearance." Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves

participation of the community in administration of justice.

*7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have. (See **A.K. Gopalan v. State of Madras**)*

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and

presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt."

22. More recently, in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra, 2011(1) RCR (Criminal) 126 : 2010(6) Recent Apex Judgments (R.A.J.) 581 : (2011)1 SCC 694**, this Court observed that "(j)ust as liberty is precious to an individual, so is the society's interest in maintenance of peace, law and order. Both are equally important." This Court further observed :

"116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

*" This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused [See **Babba v. State of Maharashtra, (2005)11 SCC 569, Vivek Kumar v. State of U.P., (2000)9 SCC 443, Mahesh Kumar Bhawsinghka v. State of Delhi, (2000)9 SCC 383**].*

23. The principles, which the Court must consider while granting or declining bail, have been culled out by this Court in the case of **Prahlad Singh Bhati v. NCT, Delhi, 2001(2) RCR (Criminal) 377 : (2001)4 SCC 280**, thus :

"The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of the evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

24. In *State of U.P. v. Amarmani Tripathi*, (2005)8 SCC 21, this Court held as under :

*"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see **Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)**]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan** : (SCC pp. 535-36, para 11)*

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of

granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are :

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

*(c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.**)"*

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary."

10. It is not in dispute that Amit Kumar (petitioner) is in custody since (21.01.2023) whereas Dinesh (petitioner) is in custody

since 20.01.2023 and both of them are behind the bars for the last more than 06 months. The investigation has been completed in the present case and the case is listed for framing of charge on 03.08.2023. Apart from that, the prosecution could not produce any material to show that the petitioners may tamper with the evidence or influence the witnesses or they will use their liberty to subvert justice. Apart from that, so far as the plea regarding the pendency of other cases against the petitioners is concerned, the law is well settled that each case for bail of an accused has to be considered in the light of the submissions made by the learned counsel for the parties and the facts of each individual case. No doubt, the past criminal record of an accused can always be taken into consideration for grant of bail, but the said record cannot be the sole basis for confinement of an accused in jail for an indefinite period. The bail to a petitioner in a particular case cannot be denied solely on the ground that several other cases are pending against him, even though, the petitioner has been able to make out a case for grant of bail in the case in hand.

11. The Hon'ble Supreme Court in the matter of **Prabhakar Tewari Vs. State of U.P., and another 2020(1) R.C.R. (Criminal) 831** has held that the pendency of several criminal cases against the accused cannot be the basis to refuse the prayer of bail. Similar observations have been made by the Hon'ble Supreme Court in the

matter of Maulana Mohd. Amir Rashadi Vs. State of U.P., and another 2012(1) R.C.R. (Criminal) 586.

12. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioners are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned. The concerned Court may insist on two heavy local sureties and may also impose any other conditions, in accordance with law, while accepting the bail bonds/surety bonds of the petitioner. In case, the petitioners re-indulge in any other case during the pendency of the trial of the present case, it shall be viewed seriously and the prosecution shall be at liberty to apply for cancellation of bail granted to the present petitioners.

31.07.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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