

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209

CRM-M-22825-2023
Date of decision: 07.12.2023

MICHAL @ KALI @ MICHAEL BHANDARI

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. N.S. Sodhi, Advocate for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.112 dated 02.05.2021, under Sections 307, 452, 148 and 149 of IPC and Sections 25, 27, 54 and 59 of Arms Act, registered at Police Station City Ferozepur.

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR has been registered on the complaint of one Adarsh Sharma son of Raman Kumar Sharma, that the petitioner along with other co-accused on 01.05.2021, at about 9:30 PM, armed with pistols, forcibly entered the complainant's house and started firing shots with an intention to kill the complainant. The complainant suffered four gunshot injuries, one hit the left thigh, one shot hit above scrotum, and one shot hit on the back of his right thigh. Thereafter, the petitioner, along with other

co-accused fled away from the spot.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

- (i) ***Petitioner was arrested on 13.08.2021;***
- (ii) ***Though the petitioner is involved in other matters also but in all those matters, the petitioner is on bail;***
- (iii) ***There is no progress in the trial as no witness has been examined so far, in fact the charges have not been framed;***
- (v) ***Petitioner has undergone incarceration of about 02 years, 06 months and 19 days;***
- (vi) ***There is inordinate delay in conclusion of trial;***
- (vii) ***There is an affidavit (Annexure P-3) sworn by the complainant/injured, regarding compromise of the instant matter.***

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate of the petitioner, as issued by the Superintendent of Central Jail, Ferozepur. Placing heavy reliance upon the criminal antecedents of the petitioner, as revealed in the custody certificate (supra), inasmuch as, his being involved in two more criminal cases, he has opposed the grant of regular bail to the petitioner.

5. This Court has called upon a specific status report from the trial Court, vide order dated 15.11.2023, and in compliance thereof, the learned trial Court has filed a status report dated 28.11.2023, which is taken on record. The relevant extract of the said status report reads as under:-

“During investigation, accused Michael was arrested and report under Section 173 Cr.P.C. against him was presented on 13.08.2021. Co- accused Rajan

Bhandari was arrested on 18.11.2021, whereas Nitin @ Chuch was arrested on 23.11.2021 and supplementary report against them was presented on 15.02.2022.

Accused Gagan Shooter son of Mohinder Paul was arrested on 08.09.2022 and supplementary report against him was presented on 06.11.2022 stating therein that accused Nannu @ Teji, Mohit Gill and Surya are yet to be arrested, whereas accused Sonu @ Chuha has expired. Said report is pending in the learned court of Chief Judicial Magistrate, Ferozepur for 30.11.2023 for calling status report qua accused Surya from the SHO concerned.

Accused Mohit Gill was arrested on 16.05.2023 and supplementary report against him was presented on 10.08.2023 stating therein that accused Nannu @ Teji and Surya are yet to be arrested, whereas accused Sonu @ Chuha has expired. Said report is pending in the learned court of Chief Judicial Magistrate, Ferozepur for 30.11.2023 for calling status report qua accused Surya from the SHO concerned.

The reports against accused Michael, Nitin and Rajan Bhandari have already been committed to Court of Session, which are pending in this court for 19.12.2023. The supplementary reports filed against-co-accused Gagan Shooter and Mohit Gill are pending before learned court of Chief Judicial Magistrate, Ferozepur for 30.11.2023. The accused Sonu @ Chuha has already expired, whereas accused Nannu @ Teji and Surya are yet to be arrested, Due to non-receipt of supplementary reports from learned court of Chief Judicial Magistrate, charge against the accused appearing before this court has not been framed. However, sincere efforts will be made to decide the case at the earliest on receipt of supplementary reports from the said learned court”.

A perusal of the above status report reveals that the delay has occurred because of the reason that the other accused in the instant FIR was arrested on different dates and thereupon the supplementary reports were filed against the other co-accused. One accused -Mohit Gill was arrested on 16.05.2023, and the supplementary report was filed against him on 10.08.2023. The above-said report further makes it clear that the delay is not on the part of the learned trial Court concerned, or on the part of the investigating agency but the delay has occurred because the co-accused was not arrested.

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 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.

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 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 petition is amenable for being allowed.

11. The reason for forming the above inference emanates from the factum that:- (i) as per custody certificate (supra), the petitioner who was arrested on 13.08.2021, and faced incarceration for about 02 years, 06 months and 19 days, has at least a right of speedy trial ; (ii) the stage of trial at the initial stage and charges are yet to be framed; (iii) Ms. Dolli Sharma, Advocate has caused appearance on behalf of the complainant and submitted that the matter has now been compromised and she has no objection in case bail is granted to the petitioner (iv) no fruitful purpose would be served by keeping the petitioner behind the bars, who undergone actual custody of about 02 years, 06 months and 19 days;(V) trial is not likely to conclude anytime soon.

FINAL ORDER

11. Taking into consideration the compromise/affidavit sworn by the complainant/victim, days of incarceration and stage of trial, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner 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.

12. However, anything observed here-in-above shall have no effect on the

merits of the trial and is meant for deciding the present petition only.

13. All pending application(s) stand disposed of accordingly.

07.12.2023
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.

:

Yes/No

Whether Reportable.

:

Yes/No