

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

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**CRM M-31349 of 2023
Date of Decision: 28.07.2023**

Babu Singh Sarpanch

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present : Mr. Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Ojaswini Gagneja, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. K.B.S. Mann, Advocate
for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has moved the present petition under Section 439 Cr.P.C. with a prayer to grant the concession of regular bail to him in case FIR No. 52 dated 20.03.2022 under Section 346 IPC (Sections 364-A, 302 and 201 of IPC were added later on vide Rapat No. 30 dated 19.12.2022 and offence under Section 120-B IPC added vide Rapat No. 23 dated 21.12.2022) registered at Police Station Kotbahi, District Sri Muktsar Sahib.

2. The FIR (Annexure P-1) was registered in the present case on the basis of the statement made by Manjit Singh son of Tar Singh, complainant. As per the complainant, he had a son, namely, Nirmal Singh and one daughter Amandeep Kaur. On 19.03.2022, his son Nirmal Singh went out of home without informing anyone and he

had moved an application in Police Station Kot Bhai in this regard and on the basis of the application moved by him, FIR No. 13 dated 20.03.2022 was lodged regarding the missing of his son Nirmal Singh. However, he conducted the inquiry at his own level and came to know that his son had been confined by some unidentified persons with *malafide* intention, at some secret place. With these broad allegations, FIR in the present case was registered against unknown persons under Section 346 IPC.

3. Learned Senior counsel appearing on behalf of the petitioner has vehemently argued that Nirmal Singh, deceased went missing from his home on 19.03.2022 and vide DDR No. 13, the missing report was registered in Police Station Kot Bhai at 09.44 a.m. on 20.03.2022. Again, on the statement made by Manjit Singh, the present FIR was registered against unknown persons. During the course of investigation, the CCTV cameras installed outside the house of Avtar Singh son of Sarban Singh was checked and it was found that one young man was driving the motorcycle and Nirmal Singh was sitting as a pillion rider. The complainant identified the said young man to be Navjot Singh @ Jyoti. On the strength of the said evidence, Navjot Singh @ Jyoti was joined in the investigation on 02.04.2022 and he stated that he had only dropped Nirmal Singh on his motorcycle and was not aware of any other fact. After recording the said statement and verifying the fact, he was let off by the police. After a period of more than 08 months, again on 19.12.2022, Navjot

Singh @ Jyoti was again associated in the investigation by the police, while he was already under arrest in case FIR No. 196 dated 26.11.2022 under Sections 302, 364-A, 120-B and 201 IPC registered at Police Station Kot Bhai.

4. During investigation, Navjot Singh @ Jyoti disclosed that he alongwith other co-accused had murdered Nirmal Singh and the corpus of the deceased, the *Gandasi* (weapon of crime) and the shoe worn by the deceased were recovered at the instance of Navjot Singh @ Joyti. While referring to the statement of Navjot Singh @ Jyoti, suffered by him in police custody (Annexure P-2), learned senior counsel contends that even as per the said statement, the only attribution to the present petitioner by Navjot Singh @ Jyoti is that he had guided them to hide the dead body of Nirmal Singh by burying it alongwith *Gandasi*. Consequently, the petitioner could not have been charged for the offence under Sections 302, 346 and 364-A IPC.

5. Learned Senior counsel strenuously argued that to falsely involve the petitioner, supplementary statement of the complainant (Annexure P-3) was recorded by the police on 19.12.2022, which was also self-contradictory. Ultimately, the petitioner was arrested on 20.12.2022 and no recovery was effected from him, which would establish the complicity of the petitioner in the crime. He further contends that even though the final report under Section 173 Cr.P.C. has been presented against the petitioner, but the police could not collect any direct evidence, which could even remotely suggest the

involvement of the petitioner in the commission of the crime. Even from the admitted case of the Investigating Agency, at the most, offence under Section 201 of IPC was made out against the petitioner. The evidence collected during the course of investigation, did not suggest that the petitioner was ever taken into confidence before committing the murder of Nirmal Singh nor was informed about the said crime. He further contends that the petitioner was involved in the present case due to political rivalry. Learned senior counsel for the petitioner refers to annexures P-5/1 to P-5/4 to contend that the petitioner has a history of various ailments, viz-a-viz, Cerebro Vascular, Haematuria, Heart, Pulmonary Embolism, Parenchymal Hemorrhage in right Cerebellar Hemisphere, Nausea, Urinary, Insomania and Hypertension etc. and was under continuous medication of the said ailments, even prior to the arrest in the present case. Even, during his custody, the petitioner remained hospitalized in various super speciality hospitals, which is evident from a bare perusal of annexures P-6/1 to P-6/4 and deserves sympathetic consideration by this Court. Still further, the petitioner was arrested in the present case on 20.12.2022 and no witness has been examined so far.

6. On the other hand, learned State counsel has vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that the petitioner was the main accused in the present case, who instigated his other co-accused to commit the crime. In this

case, Nirmal Singh was abducted by the accused, to demand ransom from his father/complainant. Even, the petitioner is in a position to influence the witnesses of the prosecution and the present bail application is liable to be dismissed.

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

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

*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 law bailable, 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."

9. Now reverting to the facts of the instant case, it is apparent that the petitioner was not initially named in the present case. However, when Navjot Singh @ Jyoti, co-accused was under investigation on 19.12.2022, the petitioner was named by him as the person, who had guided them to hide the dead body of Nirmal Singh by burying it alongwith Gandasi/weapon of crime. Even as per the statement (Annexure P-2), the petitioner was not present at the time of commission of crime and the evidentiary value of the statement (Annexure P-2) is yet to be decided by the learned trial Court during the course of trial. Still further, the petitioner was arrested in the present case on 20.12.2022 and no recovery effected from him. Even, the accused, against whom, the allegations were levelled regarding the commission of murder have already been arrested by the police. No other criminal case was registered against the petitioner. Still further, in the present case, the charges were ordered to be framed on 05.07.2023 and the conclusion of the trial may take considerable time. Apart from that, it is apparent from the perusal of the medical records annexures P-5/1 to P-5/4 and annexure R-6/1 to R-6/4, the petitioner

was not maintaining good health and even during his custody in jail, he was taken to various super speciality hospitals.

10. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.

(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty

to move an appropriate application for cancellation of bail granted to the present petitioner.

11. Needless to say that the above observations have been made only for the limited purpose of disposal of the present bail application and shall not be construed as an expression of opinion on the merits of the case and the learned trial Court shall decide the trial independently on the strength of the evidence led before the Court.

28.07.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No