

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113+214

CRM-41117-2023 in/and
CRM-M-48697-2023
Date of Decision : December 06, 2023

PRASHANT

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Prashant Singh Chauhan, Advocate
for the applicant/petitioner.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

CRM-41117-2023

The application is allowed as prayed for, subject to all just exceptions.

CRM-M-48697-2023

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.44 dated 13.06.2017, under Sections 392/34 of the IPC, and Section 25 of the Arms Act, 1959 (subsequently Sections 394 added and thereafter deleted alongwith Section 392/34 and again Sections 395/397 IPC added), registered at P.S. City Sohana, District Gurugram.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a complaint

by one Manish son of Vijay, and on the basis of his statement, FIR in question has been registered against unknown persons. The relevant extract of the statement reads as under:-

“Statement of Manish Kumar son of Vijay Kumar Caste Mahajan resident of Shop No.27, New Grain Market Sohna, Police Station City Sohna, District Gurugram and aged about 40 years, stated that I am resident of aforementioned address and is doing business of Grains at my shop. Today my along with my brother Rohit, my father Vijay Kumar and my uncle (Chacha) namely Ajay Kumar and one farmer Divender son of Moti Ram resident of Baluda were sitting there. At about 3:45 Pm two boys came to our shop and started asking about the rate of Wheat upon which my uncle (Chacha) namely Ajay Kumar told them the price of wheat upon which they left and about 10-15 minutes later 3-4 boys entered our shop having country made pistol, knife and screwdriver in their hand and started asking about the drawer of money upon which asked who are you where upon one of them gave and screwdriver blow of my head at two places because of which I got blood spattered and remaining targeted pistol towards my uncle, father and my brother and one of them picked the drawer of money in which Rs.40,000/- Rs.50,000/- were there in the said drawer cheque book and pass book of OBC Bank and Syndicate Bank belonging to Firm of Hira Lal and Manish Kumar No.07551131001266 OBC Account Syndicate Account No.82153070003261 and OBC Bank Account No.07551131001257, Syndicate Account No. 82153070003259 belonging to Bhagwati Trading Company along with stamps of both the Firms and Pan Card Rohit and Ajay and some necessary documents were taken away. They were about 25-30 years old and I can recognize them if they were brought in front of me and while leaving our shop they shop the shutter and when upon the shutter we saw that one ECO Car Maruti colour White bearing registration No.HR-42-E-1537 or 33 in the last digit and preceding number were not visualized. Legal action should be taken against them.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner submits that the petitioner is behind bar since 25.05.2023, and no role whatsoever has been assigned to the petitioner in the alleged FIR. He further submits that the co-accused who were earlier arrested and were acquitted from the

charges framed against them by the learned trial Court vide judgment dated 08.05.2019.

He further draws attention of this Court towards the statement of the material witnesses, who have turned hostile during the trial Court.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. On the other hand, learned State counsel on instructions from ESI Vijay, informed this Court that the petitioner was declared as proclaimed offender way back on 13.04.2018, in the instant case and police was only able to arrest him on 25.05.2023.

He has further placed on record the custody certificate issued by Deputy Superintendent, District Prison, Gurugram, which depict that the petitioner has suffered incarceration of 6 months 10 days as on date. In so far as antecedents are concerned, the petitioner is facing two more trial and in two cases he has been convicted and has earned acquitted in one case. Therefore, apart from the present case, he is stated to have been involved in five more cases.

On the other hand, learned counsel for the petitioner submits that though the petitioner has joined the trial yet he is behind the bar, so the effect of the order declaring him proclaimed offender has gone.

He further submits that in two cases in which the petitioner is facing trial is on bail and in other two cases in which he has been convicted, he has already completed his sentence and whereas in the fifth case as mentioned by the prosecution he has earned acquittal in that case. Therefore, as on today he is behind bar only in the instant matter.

On specific query put to learned State counsel with regard to stage of trial, he has informed this Court on instructions imparted to him by ESI Vijay, that the final report qua the petitioner was filed way back on 03.07.2023, and thereupon the charges were framed against the petitioner on 27.09.2023, and next date for recording prosecution evidence is 25.01.2024, before the learned trial Court. He further informs this Court that the prosecution has cited a total of 22 witnesses and no one has yet been examined.

ANALYSIS

5. *“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.

6. 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.

7. 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 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.”

8. 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.

9. 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.

FINAL ORDER

10. Considering the fact that the other co-accused who faced the trial have already been acquitted by the learned trial Court as well as the fact that the petitioner has faced incarceration of 6 months and 10 days as on date and the stage of the trial which is at a very initial stage, 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.

11. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

December 06, 2023
dharamvir

(KULDEEP TIWARI)
JUDGE

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