

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

113

CRM-M-58500-2023
Date of decision: 20.12.2023

NARESH KUMAR

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. D.S. Virk, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

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.717 dated 11.11.2015, under Sections 302, 201, 216, 120-B of IPC, and Section 25 of the Arms Act, registered at Police Station Sector 5, Gurugram, District Gurugram.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a statement made by one Ashok Kataria, son of Hari Singh Kataria, resident of Gurugram, wherein, he has stated that he has a HP Petrol Pump by the name Mata Sheetla Fuel Station on Palam Vihar Road, Gurgaon near Ganda Nala. On 10.11.2015, at around 10:35 PM, the complainant along with his brother Manoj, were present at the Petrol Pump, one black colour Scorpio No.HR-26-LN-0074 came to the petrol pump, and Raju alias

Raj Kumar, son of Bhim Sain R/o Mehfil Garden, Gurgaon alongwith two other boys namely Vikas and Rahul Arora, stepped out of the said car, after coming out of the car, we heard gun shot noise, and saw that Raju was running, and 3-4 boys who were having weapons were running behind Raju, and they fired bullets shots on Raju, on which Raju fell down on the road. After that said 3-4 boys ran away from the spot after leaving one motorcycle Apache White Colour, bearing a Temporary Number HR-99-WT-0465. Raju was taken to Colombia Hospital, by his friends and later Raju succumbed to death due to the gun shot injuries. When the above-said 3-4 boys were firing shots at Raju, one of the bullet had hit the front left tyre of our Ford Endeavour Car bearing No.HR-26- BQ-0999. We know Raju since before, and he came to give us Diwali Gift, and it feels that he has been murdered by his enemies due to some old enmity.

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) The other 05 co-accused who have earlier faced trial in the instant matter, were acquitted from the charges framed against them, vide judgment of acquittal dated 20.03.2018 (Annexure P-2);

(ii) One of the basic reasons for recording the verdict of acquittal (supra) was that all the three eye-witnesses turned hostile and did not support the prosecution version;

(iii) The petitioner has undergone sufficient incarceration i.e. 06 years, 07 months and 01 day as on today;

(iv) Going with the contents of the FIR, as well as the final report, which stands filed before the learned trial Court concerned, it only

reveals that the petitioner is arrayed as an accused of not committing murder, but harboring the main accused and, therefore, he is being tried only for committing the offence punishable under Section 216 of IPC ”.

(v) The petitioner has already undergone the maximum sentence, which could be imposed upon him, therefore, keeping him behind the bars would serve no purpose;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Learned State counsel has placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent of Central Jail, Hisar, Haryana, which is taken on record. The reply (supra), reveals that apart from the instant petition, the petitioner is also involved in 17 more criminal cases. So far as the instant case is concerned, the role of the petitioner as disclosed by the prosecution, through the present reply is that the petitioner has provided shelter to the co-accused and also provided money and ammunition to the main accused, therefore, the petitioner is facing the trial in offence punishable under Section 216 IPC.

5. Learned State counsel has vociferously opposed the grant of regular bail to the present petitioner, on the ground that the criminal antecedents of the petitioner does not make him deserve to be released on regular bail, as he is involved in 17 more criminal cases.

CONTENTS OF REPLY

6. On the directions issued by this Court, reply to the instant petition was filed, by way of affidavit dated 19.12.2023, of Sh. Satender Kumar, HPS, Assistant Commissioner of Police, Udyog, Gurugram has been filed on behalf of respondent-

State. The same is taken on record. A perusal of the reply reveals that after the acquittal of other co-accused, a further investigation was carried out and accused Satish @ Kala and Imran, whose complicity in the crime had come on record, on the disclosure statement made by the earlier arrested accused Binder Gujjar and were declared as proclaimed offenders. Final report against them as per the provisions of Section 299 Cr.P.C., was put in the Court of competent jurisdiction on 13.11.2016.

7. Thereupon on 18.05.2017, the accused Satish @ Kala, Arvind @ Pandit, Surender @ Fauji, and the present petitioner were arrested upon receipt of appropriate incriminating evidence against them. The co-accused Surender @ Fauji got recovered the Swift VDI car which was taken into possession. The accused Satish @ Kala in pursuance of the disclosure statement got recovered a countrymade pistol, alongwith two live cartridges, which were used by him in the commission of the crime. Accused Arvind @ Baba got recovered a Santro vehicle bearing no.HR-14C-9217, which was taken into possession.

8. That the petitioner was also interrogated while being in custody and upon interrogation, he suffered his disclosure statement admitting his involvement in the present crime. He apprised the investigating agency that accused Arvind @ Pandit and Satish @ Kala, were his old acquaintances, and they were on the run as being wanted in several murder cases. He further apprised that he used to provide them shelter and financial assistance to help them to evade their arrest and also further provide them arms and ammunition etc. He further apprised that on the date of his arrest, accused Satish @ Kala and Arvind @ Pandit had come to his place and he had provided them shelter. He further disclosed that he was having weapons with him which had been concealed by him. He further disclosed that he was having criminal cases registered against him in which he had been on the run evading his

arrest.

ANALYSIS

9. *“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.

10. 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.

11. 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.”

12. 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.

13. 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.

14. The reason for forming the above inference emanates from the factum that:- (i) Petitioner is facing trial in the instant FIR for the commission of offence punishable under Section 216 of IPC, and has undergone 06 years, 07 months and 01 day as on today; (ii) Though the petitioner is found involved in other criminal cases also, but that cannot be the sole ground for keeping the petitioner behind the bars for indefinite period; (iii) The final report *qua* the petitioner was filed way back on 14.08.2017, and as per the reply, out of total 48 cited witnesses, the testimony of only 20 witnesses has been recorded by the learned trial Court concerned; (iv) The challan has already been filed, therefore, the conclusion of trial will take long time.

FINAL ORDER

15. Considering the hereinabove made discussion, 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.

16. 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.

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

20.12.2023
amandeep

(KULDEEP TIWARI)
JUDGE

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