

2023:PHHC:163427

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217

CRM-M-62914-2023

Date of Decision : December 19, 2023

KUNAL

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Shivansh Malik, Advocate
for the petitioner.

Mr. Bhupender Singh, 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. 207 dated 14.03.2023, under Sections 307, 323, 506 and 34 of IPC (Sections 324 and 326 IPC, and Section 25 of the Arms Act, added lateron), registered at Police Station City Rohtak, District Rohtak.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a complaint made by one Sameer son of Ravi on dated 14.03.2023, with regard to incident occurred in the night of 13.03.2023. The relevant extract of the complaint reads as under:-

“Sameer S/o Ravi, am resident of Ambedkar Nagar, Rohtak and yesterday in the night on dated 13.03.2023 at about 9-09:30,I along with my friends Tushar S/o Chaman and Mohit S/o Raju, R/o

Ambedkar Nagar, Rohtak was standing on the Mamta Rani's Street, Hisar Road, Rohtak, then suddenly on a motorcycle, 4 boys came whose names are Kunal Maddi S/o Dharmender, Sunny S/o Shayam, R/o Ramleela Padav, Rohtak and Pawan @ Chinku S/o Parveen, R/o Babra Maholla, Rohtak and fourth unknown person. All of them came and started fighting with us. That all of them gave us slaps and fist blows and with the intension of eliminating us attacked us with the sharpened edged weapon. That on raising alarm all four with their weapons ran away after giving us death threats to eliminate us. That they have hit near my ear, on Mohit's stomach and on Tushar's stomach and on his hand with a knife-like weapon. About 3-4 months ago on Dussehra, Kunal Maddi and Sunny had a verbal altercation and fight with Mohit. Due to the same rivalry, all these boys have beaten us and when we got injured, our acquaintances got us admitted to the hospital for treatment. Legal action should be taken against those boys. I have got written this complaint from Kamal S/o Chandra Singh R/o Ambedkar Nagar Rohtak. SD- SAMEER Dated 14.03.2023”

The petitioner was arrested way back on dated 15.02.2023,

and the investigation was conducted, and the final report was filed on dated 07.06.2023.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner submits that on perusal of the FIR (supra) reveals that no specific injury is attributed to any of the accused, rather vague allegations have been levelled.

He further submits, that the injury which is alleged by the complainant, does not found corroboration with the medical evidence. He further draws attention of this Court to the MLR, according to which Mohit suffered lacerated wound on the abdomen, whereas the allegation against the petitioner is that he gave knife-like blow to the injured Mohit. He further submits that there are total 31 witnesses, and no one has been examined so far, and conclusion of the trial will take long time.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. On the other hand, learned State counsel vigorously opposed the grant of bail to the petitioner on the ground that all the accused in the

FIR, are facing trial under Section 307 IPC, and petitioner is one of the accused who gave injury which attracts the penal provision of Section 307 IPC.

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 and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

10. This Court has examined the MLR as well as the contents of the FIR (supra). Though the name of the petitioner figures out in the FIR itself, however, no specific injury is attributed to the petitioner in the FIR. The specific injuries were attributed during the investigation, and while recording the supplementary statements and on recording the disclosure statements of the petitioner and other co-accused. Today, learned State counsel has also filed the custody certificate issued by the Deputy Superintendent of Police, District Prison (Rohtak), which reveals that the petitioner has faced incarceration of 9 months and 1 day, and he is not involved in any other case.

FINAL ORDER

11. Considering the fact that the petitioner has suffered incarceration of 9 months and 1 day, and out of the total 31 prosecution witnesses, none has been examined so far, 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, 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 19, 2023
dharamvir

(KULDEEP TIWARI)
JUDGE

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