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2024:PHHC:023015

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1731-2024
DECIDED ON: 16.02.2024

MAHINDER PAL SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Kulbhushan Raheja, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab. .

Mr. Vivek Salathia, Advocate
for the complainant.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in case FIR No. 93, dated 18.06.2022, under Sections 302, 307, 120-B, 34 IPC and Section 25, 27 of Arms Act, 1959, registered at Police Station Chattiwind, Amritsar.
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case urging that it is a version and cross-version and the petitioner himself received two fire arm injuries, as is evident from MLRs, who remained in hospital for two months. He further contends that from the perusal of FIR and DDR, it is clear that it was the complainant party who came in the locality of the petitioner and attacked on him, meaning thereby, the complainant party was the aggressor. It is submitted on behalf of

the petitioner that the bullet which was recovered from the body of Ranjot, Narinder and Charanjot were not fired from the pistol of the petitioner, as is evident from the FSL report Annexure P-5. Learned counsel for the petitioner further submits that the petitioner is in custody since 18.06.2022, wherein charges were framed on 22.02.2023 and out of total 27 prosecution witnesses none has been examined so far.

3. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He vehemently opposes the prayer made in the present petition stating that the petitioner has actively participated in commissioning of offence and fired shots from his pistol, thus, he does not deserve the concession of regular bail at this stage.

4. Heard counsel for the respective parties at length.

5. While dealing with the issue of grant of bail, this court is of the view that deprivation of liberty is punishment unless it is required to ensure that an accused person would stand his trial when called upon and therefore, it owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. The underlined object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for me to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an under trail person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by

balancing the valuable right of liberty of an individual and the interest of the society in general. Moreover, the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. The detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution and is against the principle "Bail is a rule, jail is an exception"

6. Further reliance can be placed upon the decision of Apex court titled as "**Mahipal v. Rajesh Kumar alias Polia And Another, (2020) 2 SCC 118**", a case where the offence committed was under Section 302 of IPC, trial was pending before the Sessions Court and the bail application filed by the respondent was rejected by the learned Additional Sessions Judge but was subsequently allowed by the High Court, the following pertinent observations have been made :

"12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subserves the purpose of the criminal

justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail.

13. XX XX XX XX XX XX XX XX XX

14. *The provision for an accused to be released on bail touches upon the liberty of an individual. It is for this reason that this Court does not ordinarily interfere with an order of the High Court granting bail. However, where the discretion of the High Court to grant bail has been exercised without the due application of mind or in contravention of the directions of this Court, such an order granting bail is liable to be set aside. The Court is required to factor, amongst other things, a prima facie view that the accused had committed the offence, the nature and gravity of the offence and the likelihood of the accused obstructing the proceedings of the trial in any manner or evading the course of justice. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual liberty pending adjudication of the case. However, the grant of bail is to be secured within the bounds of the law and in compliance with the conditions laid down by this Court. It is for this reason that a court must balance numerous factors that guide the exercise of the discretionary power to grant bail on a case-by-case basis. Inherent in this determination is whether, on an analysis of the record, it appears that there is a prima facie or reasonable cause to believe that the accused had committed the crime. It is not relevant at this stage for the court to examine in detail the evidence on record to come to a conclusive finding."*

7. This Court also cannot lose sight to the fact that the petitioner himself is also a victim having suffered multiple injuries, who is vested with a fundamental right of speedy trial, as enshrined under Article 21 of the Constitution of India. The detention in custody during long pendency of trial

would definitely infringe the right of life and liberty as well, as has been enunciated by the Apex Court in “**Dataram Singh v. State of Uttar Pradesh and another, (2018)3 SCC22**”, wherein, it has been held that:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.”

8. Considering the fact that the present FIR is a version and cross-version wherein, the petitioner has also received two fire arm injuries added with the fact that the bullet recovered the body of Narinder or allegedly received by any injured was not fired from the pistol of the petitioner, as is evident from the FSL report (Annexure P-5); custody period suffered by the petitioner so far i.e., 1 year, 8 months and 1 day and he is not involved in any

other case of any nature, meaning thereby, he is not an habitual offender; wherein trial is moving at snail pace as out of total 27 prosecution witnesses none has been examined so far since framing of charges on 22.02.2023 added with the fact that the custodial interrogation of the petitioner is not required as nothing is to be recovered from his possession; this Court is of the view that no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period.

9. In view of the afore-said discussions as well as the judgment of the Apex Court rendered in the cases of *Data Ram's (supra)* and *Mahipal's (supra)* discussed herein above, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, concerned.

10. The present petition is, hereby, allowed in the afore-said terms

(SANDEEP MOUDGIL)
JUDGE

16.02.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>