

CRM-M-991-2024

2024:PHHC:049684

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CRM-M-991-2024

Date of Decision : April 15, 2024

NEHA

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. G.S.Sandhu, 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.115 dated 24.2.2021, under Section 346 IPC and under Sections 201, 302, 120-B IPC (added later on), registered at P.S. Assandh, District Karnal.

2. The petitioner, who was the complainant in the instant FIR, during the investigation she was transposed as the main accused. According to the prosecution, she conspired with one Billu and her nephew Shubham, for committing the murder of her husband Som Nath, as she has illicit relations with Billu.

3. The prosecution agency was set into motion on a complaint made by the present petitioner. The relevant extract of the same reads as

under:-

“To, SHO Police Station Assandh, Subject Regarding search of missing person. Sir, It is humbly submitted that I Neha Sharma wife of Sh. Somnath is resident of Ward no. 10, Assandh District Karnal. On 21.02.2021 at about 7:30 pm my husband Somnath @ Sonu aged about 38 years had gone out by saying that he will come after some time but till now has not come back. I have inquired at my own level from my relatives as well as brotherhood but couldn't find any clue about him. So it is requested that after registration of missing report, my husband be searched. It will be very kind of you. The description is like this, name Somnath @Sonu age 38 years, complexion wheatish, long face, lean body, height 5.7 inch, was wearing white t-shirt with black pant, blue jacket and shoes. Anmol and Vansh have been imprinted on his hand. ”

4. Upon missing report, the efforts were made to locate the deceased-Som Nath. The Investigating Officer also collected the CDRs from the Cyber Cell, DPO, Karnal. From the perusal of the CDRs, it was transpired that there was a continuous talk between the present petitioner and Billu, prior to the date of the incident. Despite best efforts, the deceased-Som Nath, was not found, however, on 2.3.2021 the dead body of Som Nath was recovered near Hansi Butana Canal, Safidon to Gohana Road. Thereupon, the post mortem of the dead body of Som Nath was conducted and the viscera was collected and the proceedings under Section 174 Cr.P.C. were conducted. During post-mortem, the following opinion was recorded by the doctor:-

“No definite opinion as to the cause of death can be furnished. However, death due to homicidal means followed by chemical burn injury over head, face, arms

and chest cannot be ruled out. Further opinion will be furnished after receipt of chemical analysis report of blood and viscera, clothes and skin piece from head and histopathology report of skin from head, face and shoulder.”

5. On perusal of the status report filed by Deputy Superintendent of Police, Assandh, Karnal, it was transpired that one Rakesh son of Bheem Singh, who is cousin of the deceased, got recorded his statement on 2.3.2021, alleging therein, that he has been informed by some one that his cousin was murdered by his wife Neha (present petitioner), Billu and his nephew, namely, Subham and he prayed for action against them. On the basis of the information supplied by Rakesh, the offences under Sections 302/201/120-B IPC were added and the present petitioner, who was earlier complainant was transposed as an accused and was arrested in the instant FIR on 5.3.2021. During investigation, she suffered a disclosure statement that she alongwith Billu conspired and murdered Som Nath by strangulating him after making him drink excess liquor and after his death, put the dead body in a plastic sack and tied the same.

6. It also transpired from the record that Subham, who was arrayed as an accused under Section 201 IPC, has been extended the relief of regular bail by the learned trial Court concerned, vide order dated 13.5.2021. It is also informed by the learned State counsel that co-accused Billu, has died during the trial and, therefore, the proceeding against him has been abated.

7. The learned counsel for the petitioner, in his asking for the relief of regular bail submits that except the disclosure statement and recovery of mobile phone, there is nothing on record, which could connect the present petitioner with the crime. He further submits that the CDRs only reflect that there are constant talks between the present petitioner and the other co-accused Billu (since deceased), but that will not complete the chain of circumstance. He further submits that the petitioner is blessed with two children, who are now under the custody of her mother-in-law, who require constant care of the present petitioner. He further draw the statements of Rakesh Kumar and Balram, as PW1 and PW2 respectively recorded during the trial to submits that they are the witnesses of hearsay evidence and the same were not considered as an evidence in the eyes of law. He further submits that the petitioner has suffered sufficient incarceration i.e. about 3 years, 1 month and 5 days as on today and the trial is at its initial stage, therefore, it will take long time to conclude.

8. Per contra, the learned State counsel, has vociferously opposed the grant of regular bail to the petitioner and has placed on record the custody certificate. He submits that the CDRs report clearly depicts that the petitioner was in constant touch with the main accused Billu and the tower locations show that the petitioner was in the house at the time of occurrence.

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 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 submissions made by both the learned counsel for the parties and is of the view that the petitioner deserves to be released on bail for the reasons that the case set up by the prosecution is on circumstantial evidence. Further, the petitioner has suffered incarceration of 3 years, 1 month and 5 days as on today and has clean antecedents. Further, the prosecution has examined only 3 witnesses out of total 32 cited witnesses. The recovery which effected from the present petitioner, whether, complete the chain of circumstantial evidence to connect the present petitioner with the crime, is a sheer matter of trial and cannot be commented upon by this Court, especially when considering the relief of regular bail and the evidence collected by the prosecution. The stage of the trial and the incarceration suffered by the present petitioner, this Court deems it fit and 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.

14. 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.

April 15, 2024
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(KULDEEP TIWARI)
JUDGE

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