

2024:PHHC:054158

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

221

CRM-M-1591-2024

Date of Decision :April 22, 2024

GURMEJ SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.S.Dhaliwal, Advocate
for the petitioner.

Mr.Raghav Garg, AAG, Punjab.

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.214, dated 04.12.2023, under Sections 365, 342, 186, 353, 332, 148, 149 and 379 of the IPC and under Section 21 of Mines and Minerals (Development and Regulation) Act, 1957, registered at Police Station City Jalalabad, District Fazilka.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a complaint made by one Kailash Dhaka, JE-cum-Inspector-Mining, Sub Division, Jalalabad, alleging therein that he was abducted and assaulted while he was performing his official duty. The gist of the FIR reads as under:-

“Statement of Kailash Dhaka son of Shalinder Singh son of Rameshwar Dhaka Resident of Village Panniwala Mota P.S.Uda Tehsil and District Sirsa (Haryana) Age about 27 years Mo: No. 88103-41032 stated that I am a resident of the said address and working as JE-Cum-Inspector Mining Sub Division Jalalabad. Today on 04.12.2023 I was riding my motorcycle at village Jandwala where

the work of canal is going on and I was going to check it when I reached near nursery Sri Muktsar Sahib Road near village Chak Saida at around 11:30 AM, then a tractor Swaraj along with trolley full of sand was coming from the side of village Saidoka on the link road. When I tried to stop it, then Driver Bubby resident of Rummawala speeded the Tractor and when I again tried to stop it then he tried to it shook me and kept the tractor trolley running, so I started making a video of it from my mobile phone, then the driver Bubby called another person. And when I reached near BSF Sector Faliawala, an unknown person hit my motorcycle and knocked me down, so I again stood up and followed him on my motorcycle. Then driver Bubby drove the tractor and trolley into the fenced house situated on the west phirni of village Chota Falianwala and locked the gate from inside, then from the other side of the house, Babbi and Gurmej Singh son of Surjit Singh and his family members including mother, brother, wife etc. Four (4) men and three (3) women including Babbi and Gurmej Singh above mentioned came and I also stopped my motorcycle, then they all surrounded me and started beating me and picked me up. They took me home and started beating me and took my mobile phone and deleted the video from it. They also took the motorcycle to their house, then an unknown person was about to break my mobile phone, so I said that I am a government employee, a case can be filed against you, so they stopped beating me, so I forced myself out of the house. When I reached the street, I called JE Malkit Singh's phone number 78888-01986 and informed about the whole incident and then I took my motorcycle from their house and when I was bringing the motorcycle from their house, Gurmej Singh started making videos in his mobile phone and started talking in such a way that he knows nothing and that he is asking us for money by calling himself a mining employee. That he has made false videos. Then I rode my motorcycle and entered the Civil Hospital Jalalabad, where you have made this statement, I have heard it. It is correct. SD/-."

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. In asking for the relief (*supra*), learned counsel for the petitioner submits that the petitioner is behind bars since last more than 4 months, and the main accused Babbu alias Tarsem, who was driving the tractor, has already been extended by benefit of regular by the learned Additional Sessions Judge, Fazilka, vide order dated 15.02.2024.

4. He further submits that the trial has only reached the midway, therefore, the conclusion of the same will take a long time.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. *Per contra*, the learned State counsel opposes the asked for

relief of grant of regular bail, and has placed on record a custody certificate *qua* the petitioner, which is taken on record, and, it reflects that the petitioner has suffered incarceration of 4 months and 17 days as on today, and, he is involved in one more criminal case.

6. He further, on instructions imparted to him by the official concerned, submits that the charges were framed way back on dated 13.02.2024, and out of total 12 prosecution witnesses cited by the prosecution, 7 have already been examined.

ANALYSIS

7. “*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.

8. 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.

9. 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.”

10. 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.*

11. 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.

FINAL ORDER

12. Be that as it may be, considering the fact that co-accused, who was in fact driving the tractor at the time of commission alleged offence, has been extended the relief of regular bail by the learned trial Court concerned, and also considering the role of the present petitioner and the period of incarceration suffered by him, i.e. 4 months and 17 days, as on today, and the stage of the trial, 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.

13. 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 22, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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