

2024:PHHC:007295

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

CRM-M-1655-2024

Date of Decision : January 19, 2024

PRASHANT

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Vikas Gulia, Advocate
for the petitioner.

Mr.Abhinash Jain, 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.197, dated 02.05.2022, under Sections 379-B/34 IPC (Sections 392, 397, 411 and 120-B IPC added and Section 34 IPC deleted later on), registered at Police Station Sonipat Sadar, District Sonipat.

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR has been registered on a statement made by one Naveen (hereinafter referred to as complainant) on 02.05.2022. The gist of the allegations, as recorded by the learned trial Court concerned, while declining the bail to the petitioner, vide order dated 28.11.2023, reads as under:-

“3. Facts in brief are that on 02.05.2022 a telephonic information was received regarding snatching of cash. Upon it, ASI Ramesh along with other police officials went to the spot where complainant Naveen met them and moved a written complaint. In the complaint, complainant

stated that he works as Junior Executive in Brinks India Private Limited and his duty is to collect the cash from private firms and deposit the same in the banks. Today, he along with his colleague Sashi Kumar was going on Motor Cycle No.HR10AM 5053 Make Delux, colour black. They collected the cash from Burger King, Haldiram, Macdy, Biji Bij, Indus Bank, Dominoz and delivery courier company total Rs.19,62,039/-. He was riding the Motor-Cycle whereas Sashi Kumar was pillion rider. From Kabirpur to ITI Chowk in front of Balaji Confectionery shop a person was crossing the road and came in front of his Bike. Due to that reason, when he halted his Bike to save him, suddenly a boy took out the keys of his Bike. The other boy with stick assaulted them. Further stated that to save himself, he entered in the office of Delivery Courier and thereas 3rd boy snatched cash from the pillion rider Sashi and went away from that place on the Bike which was parked at a slight distance. Due to some distance, he could not note down the number of the Motor-Cycle. He passed on information with the help of employee of Delivery Courier Office whereupon police reached there. A request was made to recover their cash. Upon it, above referred FIR was registered. Accused were arrested 06.05.2022. four days police remand of accused Harsh alias Hunny, Parshant and Sehdev was obtained. Accused Harsh alias Hunny, Parshant and Sehdev were also arrested in this case. Accused Shivam told the police that he has been paid Rs.75,000/- by Harsh alias Sunny out of the snatched cash for purchase of mobile Apple value Rs.69,990/-. Accordingly, he got recovered the Mobile and Rs.5,100/- cash. Offence under Section 411 IPC was added.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. Learned counsel for the petitioner submits that the present petitioner has not been named in the FIR and recovery, which has been effected from the present petitioner, is also doubtful.

4. He further submits that the co-accused-Yashbir alias Ashu, who is on similar footing and was present with the present petitioner at the spot, has been enlarged on regular bail by this Court, vide order dated 10.01.2024, passed in CRM-M-51561-2023, therefore he also deserves the concession of regular bail.

5. He further places reliance upon the order dated 11.12.2023, passed by a Co-ordinate Bench of this Court upon CRM-M-21047-2023, whereby, co-accused-Harsh, has also been granted the concession of regular bail.

6. He further submits that the petitioner has already undergone a custody of approximately 1 year and 9 months and the trial is in midway which would take long time in its conclusion.

7. Lastly, learned counsel for the petitioner draws attention of this Court to the statements of the material eyewitnesses, who turned hostile, and did not support the case of prosecution.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. *Per contra*, the learned State counsel opposes the asked for relief of grant of regular bail, on the ground that, the present petitioner is a person, who was present at the spot, and snatched money from the complainant, and subsequently, during investigation he got recovered Rs.6.50 Lakhs.

9. He also files a custody certificate *qua* the petitioner, which is taken on record, and, it reflects that the petitioner has suffered incarceration of 1 year, 8 months and 14 days, and, he is also involved in one more criminal case punishable under Sections 148, 149, 323, 324 and 506 of the IPC and under Section 46 of the Prisons Act.

10. Faced with the above difficulty, learned counsel for the petitioner, submits that the said criminal case was registered, when the petitioner was in prison and prior thereto there was no criminal antecedents of the petitioner.

11. Learned State counsel informs this Court, on instructions imparted to him by ASI Sushil, that in the instant case, the final report under Section 173 Cr.P.C. was filed way back on 18.07.2022 and out of

the total 52 prosecution witnesses cited by the prosecution only 42 have been examined, whereas, 10 more prosecution witnesses are yet to be examined.

ANALYSIS

12. *“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.

13. 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.

14. 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.”

15. 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.

16. 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

17. Considering the fact that the petitioner has suffered incarceration of 1 year, 8 months and 14 days, and, other co-accused have already been granted the concession of regular bail and 10 more prosecution witnesses are yet to be examined, whereas, the material witnesses, as examined so far have turned hostile and in so far as registration of another FIR against the petitioner is concerned, the same has been registered while being in prison, 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.

18. 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.

January 19, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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