

2024:PHHC:044997

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CRM-M-1447-2023 (O&M)
Date of Decision : April 03, 2024

SARITA

.....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)

**CRM-13140-2024 &
CRM-9847-2024**

1. The applications are allowed as prayed subject to all just exceptions and the documents as annexed with the applications are taken on record as Annexures P-6 to P-8.

CRM-M-1447-2023

2. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.233, dated 27.08.2020, under Sections 302 and 120-B of the IPC, and under Section 25 of the Arms Act, 1959, registered at Police Station Lakhan Majra, District Rohtak.

ALLEGATIONS AGAINST THE PETITIONER

3. The case as set up by the prosecution agency is that on 27.08.2020 a dead body of an unknown person was found lying on the

Jind-Rohtak road, near a canal, of village Chandi. On receipt of information the prosecution agency proceeded to the spot, where the dead body was found lying on the roadside and one motorcycle bearing No.HR-15-E-0480, make TVS Star, CT, was parked nearby with the milk drum attached to it. One Rakesh, brother of the deceased, was present at the spot, who presented a written complaint that his brother Jai Bhagwan (deceased), who was doing the work of supplying milk in village, on the fateful day at about 8:15 A.M. he was going to Rohtak after loading milk drums and when he reached on the spot of occurrence, he was shot dead by some unknown person.

4. After three days of the occurrence the statement of wife of the deceased was recorded, wherein, she raised suspension against the present petitioner, alleging therein, that her husband (deceased) used to collect milk from Sarita (present petitioner), and the petitioner became friendly with the deceased for about one year, and for which, about 1/ ½ year ago, wife of the deceased (Preeti) had rebuked the petitioner, due to which present petitioner-Sarita, nursed a grudge against them, and the petitioner connived with her brother Davinder and son Ravi, and got the deceased shot dead with a gun.

5. On the basis of the above statement, an offence under Section 120-B IPC was added, and the present petitioner was arrested alongwith her brother on dated 30.08.2020 itself.

6. As per the prosecution story, during investigation it transpired that in fact co-accused-Ravi (since deceased), son of present

petitioner, was in touch with one Deepak, who is already confined in Tihar Jail, got him introduced with co-accused Mohit and Ankit, and thereupon, Ravi (deceased son of the petitioner) on the fateful day, with the help of Mohit and Ankit, committed the murder of the deceased-Jai Bhagwan.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

7. Learned counsel for the petitioner in asking for the relief of regular bail to the petitioner submits that the petitioner is only accused of offence punishable under Section 120-B IPC.

8. He further submits that as per the prosecution story the main assailant was Ankit, who opened fire upon the deceased-Jai Bhagwan, who has been granted the benefit of regular bail by the learned trial Court concerned, itself, owing to the reason that the weapon of offence, was never sent to the FSL, or ballistic examination, and there was no incriminating evidence to connect him with the crime.

9. He further submits that son of the present petitioner namely Ravi, has died, during the pendency of this instant matter,

10. He further submits that except the disclosure statement of the co-accused, and the apprehension raised by the wife of the deceased-Jai Bhagwan, there is no other incriminating evidence available to connect the present petitioner with the crime.

11. He also submits that the petitioner is a lady, and is behind bars for the last 3 years and 6 months, and out of the total 61 prosecution witnesses, only one has been examined so far, and she is not involved in

any other criminal case.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

12. *Per contra*, the learned State counsel vociferously opposed the asked for relief on the ground that the petitioner is the main conspirator, as she nurtured grudge against the deceased-Jai Bhagwan, and his wife, and in fact the petitioner, who instigated her son and her brother to commit the alleged murder.

13. He has also placed on record a custody certificate *qua* the petitioner, which is taken on record, and a perusal of the same reveals that the petitioner has suffered incarceration of 03 years and 06 months, as on today, and she is not involved in any other criminal case.

14. He also submits, on instructions imparted to him by the police official, that *challan* was presented, and the charges have been framed by the learned trial Court concerned, and further, out of the total 61 prosecution witnesses, only one has been examined till date.

ANALYSIS

15. “*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.

16. 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.

17. 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.”

18. 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.

19. 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.

20. On the touchstone of the above legal proposition discussed by this Court, it can safely be concluded that the present petitioner deserves the concession of relief of regular bail, specifically on the ground that; (i) the petitioner has suffered incarceration of 3 years and 6 months; (ii) the main assailant, who as per the prosecution was present at the spot has already been extended the benefit of regular bail: (iii) despite lapse of 3 years and 6 months only one witnesses has been examined out of the total 61 prosecution witnesses, therefore, conclusion of the trial would take a long time.

FINAL ORDER

21. Considering the fact that the petitioner is a lady, and she has suffered incarceration of 03 years and 6 months, as on today, and out of the total 61 prosecution witnesses cited by the prosecution, only 01 has been examined till date, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner, during the pendency of trial. 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.

22. All pending application(s), if any, also stands disposed of.

April 03, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

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