



CRM-M-2406-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111)

CRM-M-2406-2023 (O&M)
Date of Decision : 25.09.2024

Anand

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Kamal Mor, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. AG, Haryana.

KULDEEP TIWARI, J.(ORAL)

CRM-39048-2024

Application for placing on record, is allowed, as prayed for,
subject to just exceptions and document Annexure P-3, is taken on record.

CRM-M-2406-2023

1. Through the instant petition, filed under Section 439 of Cr.P.C.,
1973, a prayer is made for grant of relief of regular bail to the petitioner in
case FIR No.157, dated 30.04.2022 under Sections 302, 303, 212, 120-B and
34 of the IPC, 1860 and under Sections 25/27 of the Arms Act, 1959,
registered at Police Station Asauda, District Jhajjar, Haryana.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

2. Learned counsel for the petitioner, on asking for the relief of
regular bail, submits that the petitioner is neither named in the FIR (supra),
nor any specific role has been attributed to him. He further submits that the

name of the petitioner has only figured out, only on the basis of disclosure



statement suffered by the co-accused, the probative value of such evidence is inherently weak. He also submits that all the witnesses, who were stated to be an eye-witness, has been examined by the prosecution, and all of them have turned hostile. Learned counsel next submits, that there is no inculpatory or any incriminating evidence with the prosecution, which would connect the petitioner, with the alleged crime. Finally, he submits that the petitioner has clean antecedents.

FACTS OF THE CASE

3. In the instant case, the FIR (supra), was registered on a complaint, made by Anand, son of Bagheram. The relevant extract of the complaint, which become the bedrock for the registration of the FIR (supra), is reads as under :-

“To, The Police post Incharge Asauda. Sir, it is requested that I Anand son of Bagheram is a resident of village Jasaur Kheri. I am working as a driver in a private school. We are two brothers. I am elder and younger Ombir alias Bholu. That today at around 8 PM when I was going to school on my duty and when I reached near thatch of Gandhi then Raj son of Satbir R/o village Jasaur Khedi met me in the way and told me that near HUDA canal at Kalasi wala bridge, when we all three i.e. myself Vikas alias Kalu son of Dilbag and your brother Ombir alias Bholu were consuming alcohol, someone shot your brother 3-4 times who has died. When I reached on the spot I saw that my brother Ombir alias Bholu was lying dead along the banks of the canal. Blood was oozing out from his head and nearby hip. That some unknown person has shot and killed my brother. Kindly take legal action against him.”

4. Thereupon, the investigation was carried out. The present petitioner was arrested on 05.05.2022, and he got recovered one mobile



phone, which was taken into police possession, vide its separate recovery memo. After the co-accused was arrested, the recovery of other weapon of offence, was also effected from the co-accused.

SUBMISSIONS BY LEARNED STATE COUNSEL

5. As per the prosecution, the allegations raised against the present petitioner is that, the petitioner did *reccy* and informed the co-accused Ajayveer @ Tini, about the location of the deceased. The call details and the location have been procured during the investigation.

6. Custody certificate dated 10.09.2024, qua the petitioner, furnished by learned State counsel today in the Court. The same is ordered to be taken on record.

7. An additional status report, whereby, the statement of all the private witnesses, recorded under Section 161 Cr.P.C., has been placed on record, by the learned State counsel. In the statement of all the private witnesses, recorded under Section 161 Cr.P.C., the name of the present petitioner does not figured out, rather, there are allegations against Ajayveer @ Tini, who, according to the prosecution, has fired 3-4 shots on Ombir @ Bholu, son of Bagheram (since deceased).

ANALYSIS

8. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

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 ***“Gurbaksh Singh Sibbia v. State of Punjab”***, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out by the Hon’ble Supreme Court 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, AIR 1924 Calcutta 476 (479, 480) that 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 Allahabad 504 (SB) 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. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which 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.

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29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "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, Vol. 8, page 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 ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh", 1978 AIR (Supreme Court) 429***, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

"9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record- particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of



society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice - to the individual involved and society affected.

11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and



individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses



and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal.”

DECISION

13. This Court, has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and the rival submissions made by the learned counsel for the parties concerned.

14. Without commenting anything on the merits of the case, this Court is of the considered opinion, that the instant petition is amenable to be allowed, at this stage, for the reasons extracted hereinbelow :-

- i) There is no allegation against the present petitioner that he opened a fire and caused any injury to the deceased;*
- ii) As on date, the only allegation, which has been brought on record, by way of disclosure statement suffered by the co-accused against the present petitioner is that, the petitioner did reccy, regarding the presence of the deceased and informed the main accused;*
- iii) All the private witnesses, who have been examined by the prosecution, have now turned hostile;*
- iv) Further considering the fact that the petitioner has suffered incarceration of about 02 years, 04 months and 05 days and has clean antecedents, and the trial is mid way and it will take long time to conclude, therefore, this Court is of the considered opinion that further incarceration of the petitioner is totally unwarranted.*

15. Accordingly, the instant petition is **allowed**. The petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds

to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

16. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

September 25, 2024
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No