

Date of Decision : May 28, 2024

V/S

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sukhbir Maandi, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, the petitioner craves for indulgence of this Court for him being enlarged on regular bail, in case FIR No.89 dated 04.06.2022, under Sections 302, 379-B, 34 of the IPC, 1860, and, Sections 25, 27 of the Arms Act, 1959 (Sections 201, 212, 411 of the IPC, and, Section 29 of the Arms Act added subsequently), registered at P.S. Majitha, District Amritsar (Rural).

ALLEGATIONS IN THE FIR

2. The present FIR derives its genesis from the statement of one Gurbhej Singh (hereinafter referred to as the ‘complainant’), relevant extract whereof, as narrated in the reply dated 08.05.2024, is reproduced hereinafter:-

"...the aforesaid case FIR No. 89 dated 04.06.2022 was registered on the basis of the statement of Gurbhej Singh son of Charan Singh resident of Dhing Nangal, P.S. Majitha, Amritsar, who had alleged therein that on 03.06.2022 at about 7:45 P.M, he along with his brother Harjinder Singh were going towards village for some personal work and when they reached at bridge drain, village Dhing Nangal, near water



tank, his nephew Bhupinder Singh also came over there and in the meantime, Jasmeet Singh @ Jassi armed with revolver, Harjinder Singh armed with datar were trying to snatch the Aactiva No. PB02-CY-1464 from Kanwaljit Kaur and Nannu, daughters of Sarabjit Singh and his brother Harjinder Singh stopped them from doing so and the co-accused Harjinder Singh raised lalkara to teach his brother Harjinder Singh a lesson for stopping them. He further alleged that Jasmeet Singh fired shot from his revolver, which hit him on the right side of the chest of Harjinder Singh and when he raised hue and cry, Jasmeet Singh and his father Harjinder Singh snatched the Aactiva from the girls and fled away from the spot along with their weapons and they took Harjinder Singh to Guru Nanak Dev Hospital, Amritsar, where the doctor declared him brought dead...”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

- (i) Neither the petitioner was present at the place of occurrence, nor his name is reflected in the FIR, nor any role whatsoever has been assigned to him therein;*
- (ii) The petitioner has been arrayed as an accused, solely on the basis of disclosure statement of co-accused Jasmeet Singh;*
- (iii) The only allegation against the petitioner, as per prosecution version, is that, he had supplied the bullets/cartridges to co-accused Jasmeet Singh, which were then used by him in commission of the crime. Other than this, there is no allegation regarding active participation or conspiracy of the petitioner in the alleged offence;*
- (iv) Petitioner’s co-accused Harpal Singh @ Labha, from whom the petitioner had purchased the bullets/cartridges and then sup-*



plied them to the co-accused Jasmeet Singh, has already been extended the relief of regular bail by a Co-ordinate Bench of this Court, vide order dated 22.11.2023, drawn upon CRM-M-29095-2023. Therefore, the petitioner being on a co-equal pedestal, as co-accused (supra), also deserves the concession of bail;

(v) The petitioner has clean antecedents and he has suffered incarceration of approx. 1 year and 11 months;

(vi) Trial is not likely to conclude anytime soon, as despite the charges becoming framed on 17.12.2022, the prosecution has not yet concluded its evidence, rather the trial is progressing at a snail's pace, inasmuch as, out of total 30 prosecution witnesses, none has been examined so far, and therefore, keeping the petitioner behinds the bars would serve no gainful purpose;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. *Per contra*, the learned State counsel has opposed the grant of regular bail to the petitioner, on the ground that, he had, after purchasing the bullets/cartridges from co-accused Harpal Singh @ Labha, supplied the same to co-accused Jasmeet Singh, who then used the same in commission of the present offence. He has also placed on record the custody certificate of the petitioner, as issued by the Superintendent, Central Jail, Amritsar.

5. Although the learned State counsel has opposed the grant of bail, however, he does not dispute the factum that the only role assigned to the petitioner is that, he had supplied the bullets/cartridges to co-accused Jasmeet Singh, which were then used by him in commission of the crime. For ready reference, paragraph No.12 of the reply dated 08.05.2024, wherein becomes disclosed the role of the petitioner, is extracted hereinafter:-



CRM-M-2498-2024

4

“12. That as per the prosecution version, the petitioner had procured the .32 bore bullets from the co-accused Harpal Singh alias Labha and further handed over to the co-accused Jasmeet Singh alias Jassi and the aforesaid bullets were used by the co-accused Jasmeet Singh in the commission of the murder of the deceased Harjinder Singh.”

6. Moreover, on instructions imparted to him by the official concerned, the learned State counsel has verified that, none out of the total 30 prosecution witnesses has yet been examined.

ANALYSIS

7. 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.

8. *“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.

9. 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.



10. 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."

11. 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 or 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."

12. Be that as it may, considering the hereinabove made submissions, especially the fact that: (i) as per the reply dated 08.05.2024, the only allegation against the petitioner is that, he had supplied the bullets/cartridges to co-accused Jasmeet Singh, which were then used by him in commission of the crime; (ii) the petitioner's co-accused Harpal



CRM-M-2498-2024

9

Singh @ Labha, who is on co-equal pedestal as the petitioner, has already been granted bail by a Co-ordinate Bench of this Court; (iii) as per custody certificate, the petitioner has clean antecedents and he has suffered incarceration of approx. 1 year and 11 months; (iv) trial is at its initial stage and is not likely to conclude anytime soon, as out of total 30 prosecution witnesses, none has yet been examined, therefore, subjecting the petitioner to prolonged incarceration would serve no fruitful purpose; 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.

13. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

May 28, 2024
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(KULDEEP TIWARI)
JUDGE

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