

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108 CRM-M-2555-2024
Date of Decision : January 29, 2024

NASIB CHAND -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate
Mr. V.P.S. Mithewal, Advocate and
Mr. Saurav Dogra, Advocate
for the petitioner.

Mr. Dig Vijay Nagpal, A.A.G., 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.159 dated 17.10.2023, under Sections 21(1) and 4(1) of the Mines and Minerals (Regulation of Development) Act, 1957, and, Sections 379, 188, 120-B, 411, 414, 418, 420, 447 of the IPC, registered at P.S. Nangal, Rupnagar.

FACTUAL MATRIX

2. What constituted the bedrock for registration of the instant FIR, was a complaint made by the Sub Divisional Officer, Water Drainage-cum-Mining and Geology, Sub Division, Nangal. The gist of the said complaint, as extracted in paragraph No.3 of the order dated 08.01.2024, whereby, the learned Sessions Judge concerned declined to grant bail to the petitioner, is

extracted hereinafter:-

“....the Sub Divisional Officer, Water Drainage-cum-Mining and Geology, Sub Division, Nangal wrote a letter to the SHO, Police Station, Nangal pertaining to subject of taking action of illegal mining, submitting that on routine checking, it was found that on the site which is in front of Shri Ram Crusher village Bhalrri, a pit of illegal mining has been discovered. The said pit is located near the Shri Ram Crusher and the said illegal mining has been carried out by the owner of said crusher. The co-ordinates of said pit are 31.287182”N, 76.344206”E and the calculation of material dug from the said pit comes to 8,09,860 cubic feet....”

SUBMISSIONS OF LEARNED SENIOR COUNSEL FOR THE PETITIONER

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

- (i) Apart from the instant FIR, the petitioner has, merely being owner of the Crusher concerned, falsely been implicated in three other cases also, wherein, exact same allegations, as levelled in the instant FIR, have been levelled;*
- (ii) In all those three cases, the petitioner has been granted the concession of bail by Co-ordinate Benches of this Court;*
- (iii) The instant FIR has been lodged purely on the basis of suspicion;*
- (iv) There is nothing available on record, which may even remotely connect the petitioner with the alleged act of illegal mining;*
- (v) Though certain vehicles have been seized by the investigating agency, however, there is no evidence available*

on record to suggest that the said vehicles were used in commission of illegal mining, as alleged in the instant FIR;

(vi) Petitioner has suffered incarceration of approx. 2 months;

(vii) Charges are yet to be framed, therefore, keeping the petitioner behind the bars would serve no gainful purpose;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. *Per contra*, the learned State counsel has vociferously opposed the grant of regular bail to the petitioner, on the ground that, the petitioner is a habitual offender, as he is involved in three other cases of similar offences, and as such, his criminal antecedents debar him from claiming the relief of regular bail. He has further submitted that under the garb of a licensed crusher, the petitioner has been indulging in illegal mining activities.

5. Though the learned State counsel has opposed the grant of bail to the petitioner, however, he has not contested the factum *qua* the petitioner being behind the bars for approx. 2 months, nor has contested the factum that charges are yet to be framed.

ANALYSIS

6. “*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.

7. 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.

8. 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 [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] 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 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.”

9. 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. Be that as it may, this Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

12. The reason for forming the above inference emanates from the factum that:- (i) the custody certificate of the petitioner reveals that undergone actual custody of approx. 2 months; (ii) though the petitioner is involved in three other cases involving similar offences, however, he has been granted the concession of bail by Co-ordinate Benches of this Court, (iii) there is no likelihood of the trial concluding anytime soon, as charges are admittedly yet to be framed, therefore, keeping the petitioner behind bars would serve no fruitful purpose.

FINAL ORDER

13. Considering the hereinabove made discussion, 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.

14. It is clarified that 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 29, 2024

devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No