

2024:PHHC:050945

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CRM-M-4670-2024

Date of Decision : April 16, 2023

JATIN KUMAR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

297

CRM-M-16973-2024

RAHUL KHURANA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr.I.S.Dhaliwal, Advocate,
for the petitioner in CRM-M-4670-2024.

Mr.Amandeep Chhabra, Advocate,
for the petitioner CRM-M-16973-2024

Mr.Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI. J.(Oral)

1. Since both the petitions arise out of the same FIR therefore, both are taken together for its adjudication.
2. Through the instant petition filed under Section 439 Cr.P.C. the petitioners pray for grant of regular bail in case FIR No.70, dated 26.05.2022, under Sections 302, 201 and 34 of the IPC (Section 120-B IPC added latter on), registered at Police Station Sadar Malour, District

Sri Muktsar Sahib.

ALLEGATIONS AGAINST THE PETITIONERS

3. The prosecution agency was set into motion on a complaint made by one Sardool Singh, who alleged that on dated 20.05.2022, at about 4:00 P.M. his son Vikramjeet Singh alisa Vicky, received a phone call and he left while saying that he will return home shortly, but he did not return. The complainant made several call to his son but he received no response. On dated 22.05.2022, he came to know that the dead body of his son has been recovered from the drain in the area of village Malout. As his son died in suspicious circumstances, therefore, the proceedings under Section 174 Cr.P.C., were carried out. Thereupon, the complainant at his own level conducted some inquiries, and discovered that his son Vikramjeet Singh (since deceased), has infact, been murdered by the present petitioners, by giving him some poisonous and intoxicant substance, which lead to his death and thereafter, they disposed of the body of aforesaid victim in a drain.

4. During the investigation both the petitioners were arrested, and they suffered disclosure statement, that they used to purchase the intoxicant substance (heroin) from one Lovepreet Singh, and thereupon, they used to consume it, and on dated 29.05.2022, Lovepreet Singh was also arrested in the instant matter.

5. It is admitted fact that the aforesaid Lovepreet Singh, has been granted regular bail by a co-ordinate Bench of this Court vide order dated 05.10.2023, passed in CRM-M-34599-2022.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

6. In asking for the relief (*supra*), learned counsel for the petitioners submit that till date, the prosecution has not been able to collect any evidence, to substantiate the allegations as alleged againsts the present petitioners.

7. They further submit that except the statement of the father of the deceased-Vikramjeet Singh, that too based on suspicions, the prosecution has no evidence to connect the present petitioners with the crime

8. They further submit that till date the prosecution has no evidence to conclude that it is a case of homicidal death, as neither poison nor heroin, was detected in the viscera collected during postmortem of the deceased.

9. They also submit that the petitioners have already suffered incarceration of more than 1 ½ year, and the trial is at initial stage, and conclusion of which will take long time, therefore, their further incarceration is unwarranted.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. *Per contra*, the learned State counsel vociferously opposed the asked for relief, on the ground that they have committed heinous offence as they have administered overdose of heroin to the deceased which led to his death.

11. Further, he has placed on record a status report dated

15.04.2024 (in CRM-M-4670-2024), by way of affidavits of Mr. Pawanjit, DSP, Sub-Division, Malout, District Sri Muktsar Sahib, and also the custody certificate *qua* the petitioners, which are taken on record.

12. From the aforesaid reply, he draws attention of this Court towards Annexure R-3, which is a medical opinion of the concerned doctor, and according to that the effect of heroin remains in plasma only for 2-3 hours, and elimination of heroin from the body will take complete 24 hours. The relevant extract from the status report (*supra*) reads as under:-

“(v).....the effect of Heorin remains in Plazma t ½ of morphine:- 2-3 hours. Effect of parenteral dose:- 4-6 hours. Elimination of Heroin from body is almost complete in 24 hours and morphine is non-cumulative.....”

13. Learned State counsel, on instructions imparted to him by ASI Tejwinder Singh, informs this Court that out of the total 28 prosecution witnesses cited by the prosecution in the final report, 03 witnesses have already been examined.

14. A perusal of the custody certificate reveals that the petitioners have suffered incarceration of 1 year, 10 months and 18 days as on today. Petitioner Jatin Kumar is stated to be involved in two more criminal cases, whereas, petitioner-Rahul Khurana, is not involved in any other criminal case.

ANALYSIS

15. This Court has heard the learned counsel for both the parties concerned, and has gone through the entire case file, and also the replies filed by the State.

16. *“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.

17. 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.

18. 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.”

19. 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.

20. 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

21. Be that as it may be, this Court without going into the issue whether, it is a case of homicidal death or not, which is the mute question, required to be decided by the learned trial Court concerned, at an appropriate stage, but considering the nature of the evidence collected so far, by the prosecution, and the petitioners have suffered incarceration of 1 year, 10 months and 18 days, as on today, and trial will take some time to conclude, and out of the total 28 prosecution witnesses, only 03 have been examined till date, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioners, during the pendency of trial. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioners are ordered to be released on bail, on furnishing of their bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

22. However, it is clarified that if in future, the petitioners are 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.

A photocopy of this order be placed on the file of the connected case.

April 16, 2024
dharamvir/ajay-1

(KULDEEP TIWARI)
JUDGE

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