

2024:PHHC:042111

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

114 (I) CRM-M-5305-2024
Date of Decision : March 22, 2024

VIRENDER SINGH **-PETITIONER**

V/S

STATE OF PUNJAB -RESPONDENT

(II) CRM-M-48310-2023 (O&M)

SANDEEP SINGH **-PETITIONER**

V/S

STATE OF PUNJAB -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Shivam Kaushik, Advocate
for the petitioner (in CRM-M-5305-2024).

Mr. Prateek Pandit, Advocate
for the petitioner (in CRM-M-48310-2023).

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

KULDEEP TIWARI, J. (ORAL)

1. The amenability of both these petitions, for being decided through a common verdict, emanates from them being arising out of the same FIR, besides emanates from common relief(s) being craved to be reaped therein.

2. Through the instant petitions, the petitioners crave for indulgence of this Court for them being enlarged on regular bail, in case FIR No.06 dated 17.02.2023, under Sections 302, 379 and 34 of the IPC, 1860, and, Sections 4(1) and 21(1) of the Mines and Minerals (Regulation and Development) Act, 1957, registered at P.S. Handesra, District S.A.S. Nagar.

ALLEGATIONS AGAINST THE PETITIONERS

3. The genesis of the present FIR is embodied in the statement made by one Bhupinder Singh son of Gurcharan Singh, on the allegations that, illegal mining was being done in his village. The relevant extract of his statement, which constituted the bedrock for registration of the present FIR, and, which is narrated in order dated 05.01.2024, whereby, the learned Additional Sessions Judge concerned has declined to grant bail to the petitioner (in CRM-M-5305-2024), is extracted hereinafter:-

“5. The brief facts of the case are that Bhupinder Singh son of Gurcharan Singh resident of Village Badana made statement that on 16.02.2023 at about 10:30/11:00 PM, illegal mining was being done in their village. On hearing noise of tractors his father Gurcharan Singh and Mohinder Singh went to the spot. They stopped one tractor and the driver told that Harvinder Singh @ Gaggu is doing the mining in the Shamlat land. His father asked to call Harvinder Singh and Village Panchayat. The driver however, called 5-7 more boys at the spot who pleaded for allowing them to go and they will call Harvinder Singh at the spot. In the meantime, 4 more boys including Jaswinder Singh son of Chajju Singh came there. Jaswinder Singh son of Chajju Singh was owner of tractor and Jaswinder Singh son of Bir Singh started the tractor of Jaswinder son of Chajju Singh and stated that he should get off the way or he will run over. Then he run over Gurcharan Singh with the tractor and they ran away from the spot. Complainant along with Gurpreet Singh took his father to hospital but his father died on the way. Accordingly, FIR was registered.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PETITIONERS

4. The prime argument of the learned counsels appearing for the petitioners, is rested upon, the present FIR being totally silent about the role

of the present petitioners. How the petitioners came to be implicated in the present FIR, was that, the complainant made an application dated 06.03.2023, to the Inspector General concerned, thereby, alleging the petitioners to be present at the place of occurrence. However, during the course of investigation, supplementary challans *qua* the petitioner (in CRM-M-5305-2024) and petitioner (in CRM-M-48310-2023) were filed respectively on 07.11.2023 and 21.08.2023, wherein, the sole allegation(s) levelled against the petitioners, is that of conducting illegal mining, and, no allegation(s) attracting the provisions of Section 302/34 have been levelled therein against them.

5. The learned counsels appearing for the petitioners have further submitted that since the petitioner (in CRM-M-5305-2024) and petitioner (in CRM-M-48310-2023), who have clean past antecedents, have been behind the bars respectively since 07.09.2023 and 12.07.2023, and, since there is no likelihood of the trial concluding anytime soon, as charges are yet to be framed, therefore, the petitioners deserve the concession of bail.

6. Lastly, the learned counsels appearing for the petitioners have submitted that since petitioners' co-accused, namely, Harwinder Singh @ Guggu and Husanpreet Singh, have already been granted the relief of regular bail by this Court, the petitioners also deserve being treated at par, through enlarging them also on regular bail.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. *Per contra*, the learned State counsel, though has opposed the grant of regular bail to the petitioners, however, he does not contest the fact that the only role assigned to the petitioners, is that of indulging in illegal mining. He has also filed custody certificates of the petitioners, which are

taken on record.

8. Moreover, on instructions imparted to him by H.C. Bhupinder Singh, he verifies that charges are yet to be framed.

ANALYSIS

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 “*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. ”

12. 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.

13. 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 petitions are amenable for being allowed.

14. The reason for forming the above inference emanates from the factum that:- (i) the sole allegation assigned to the petitioner is that of committing illegal mining; (ii) petitioners’ co-accused have already been granted the relief of regular bail by this Court; (iii) petitioner (in CRM-M-5305-2024) and petitioner (in CRM-M-48310-2023) have suffered incarceration respectively of approx. 06½ months and 08½ months, and,

they have clean past antecedents; (iv) there is no likelihood of the trial concluding anytime soon, inasmuch as, charges are yet to be framed, therefore, keeping the petitioners behind bars would serve no gainful purpose.

FINAL ORDER

15. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioners. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioners are 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.

16. 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.

March 22, 2024
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(KULDEEP TIWARI)
JUDGE

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