

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

(216)

**2024:PHHC: 045154
CRM-M-5745-2024
Date of Decision: 03.04.2024**

Aman

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE KULDEEP TIWARI.

Present:- Mr. Bhupender Singh, Advocate for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

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. 0373 dated 27.06.2023, under Section 346 of the IPC, (with Sections 201, 302 and 120-B IPC, added later on and Section 346 has been removed), registered at Police Station, Gharaunda, District Karnal.

2. The petitioner was arrested on 04.07.2023. The only allegation against the petitioner is that main accused before committing murder of the victim, handed over his mobile phone to the present petitioner, so that his mobile location could not connect the main accused with the crime. The brief facts of the present case which are culled out by the Trial Court read as under:-

“2. Brief facts of the case are that on 27.06.2023, complainant Kiran wife of Devi Singh presented an application to the effect that her husband Devi Singh alias Sonu works as an electrician in Ansul Food, G.T. Road and he has not returned from his duties on 26.06.2023. She prayed for initiation of an action. On this information, FIR under Section 346 IPC was registered. Thereafter, the statement of

complainant Kiran Devi was recorded by the police, in which, she disclosed that she had become friends with Sachin son of Surjit and they were also in a relationship. Both of them started doing journalism together. Sachin developed good relations with her husband Devi Singh also and they both used to drink alcohol together. However, later on, her husband Devi Singh stopped her from working with Sachin, however, Sachin used to force her to meet him. She further stated that she had to get some money from Sachin and for this purpose, Sachin called her at Paral Dhaba on 26.06.2023. She met him there and talked to him for 40 minutes and told him to clear her dues and she also told him that she will not meet him in future. On this, Sachin told her that he will see her and even she will not remain happy for ever. The complainant raised suspicion that Sachin son of Surjit has concealed her husband at some unknown place.”

3. After registration of the FIR (supra), investigation was carried out, and Sachin was arrested on dated 26.07.2023, wherein, he disclosed about commission of the offence, and thereupon, offence under Sections 201 and 302 IPC were added and offence under Section 346 IPC was deleted from the FIR (supra). It is also transpired from the investigation, that the dead body of the deceased was also got recovered by Sachin. The role of present petitioner surfaced on the disclosure statement made by Sachin, wherein, he stated that he also met the present petitioner, and they both consumed liquor together and thereafter, he called Devi Singh deceased, to meet him at 6 PM for the purpose of drinking alcohol. It also transpires from the disclosure statement of main accused Sachin that, he disclosed about his intention that he is going to eliminate Devi Singh today, and further handed over his mobile phone to the present petitioner so that his mobile location could not be connected with the commission of crime.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

4. Learned counsel for the petitioner submits that except the disclosure statement of main accused Sachin, there is nothing on record which could connect the present petitioner with the crime. He further submits that recovery of the mobile phone (though disputed) of the main accused, would also not complete the chain of circumstantial evidence so as to connect the present petitioner with the instant crime. He further submits that there is no allegation that he conspired with the main accused to commit murder nor any motive has been attributed to the present petitioner.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. Learned State counsel upon notice has filed reply by way of affidavit. The reply (*supra*) carries the translated copy of disclosure statement of present petitioner Aman, wherein, it has been disclosed by the petitioner that the main accused Sachin informed him about his intention to eliminate Devi Singh, the deceased and also handed over him his mobile phone.

6. Be that as it may. Considering the fact that *prima facie*, no case is made out against the present petitioner, as no motive has been attributed to him, and also the fact that he is not involved in commission of murder, petitioner deserves the concession of regular bail. The only role assigned to the petitioner was that he was informed by the main accused Sachin, that he would eliminate Devi Singh-deceased as well as handing over his mobile phone to the petitioner so as to avoid his mobile phone location be connected with commission of crime.

7. Learned State counsel has placed on record a custody certificate *qua* the petitioner, which is taken on record, and perusal of the same reveals

that the petitioner has suffered incarceration of 08 months and 28 days as on 02.04.2024.

ANALYSIS

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

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 Baliy**”, 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** 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 and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

FINAL ORDER

14. Considering the fact that the instant case is based upon circumstantial evidence, the petitioner has suffered incarceration of 08 months and 28 days as on today, the trial is at initial stage and further the

petitioner has clean antecedents, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner, during the pendency of trial. 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.

15. However, it is clarified that if in future, the petitioner is 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.

03.04.2024
lucky

(KULDEEP TIWARI)
JUDGE

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