



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

213

CRM-M-6871-2024
Date of decision: 10.07.2024

ASHWANIPetitioner

Versus

STATE OF HARYANA ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Anil Kumar Bhardaj, Advocate
for the petitioner.

Mr. Rajesh Gaur, Additional A.G., Haryana.

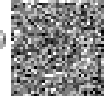
KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.406 dated 15.09.2021, under Sections 120-B, 302, 449 and 201, read with Section 34 of IPC, registered at Police Station Rohtak, District Rohtak, Haryana.

ALLEGATIONS AGAINST THE PETITIONER

2. The gist of the allegations as culled out from the FIR, reads as under:-

“To, S.H.O. Sahab, Sadar Police Station, Rohtak Sir, It is requested that I am Ajay s/o Baljit Singh caste Jat, is resident of village Jasia. We are two brothers. My younger brother is Vikas Nanha, who used to run auto. My father had already expired. Yesterday i.e. on 14.09.2021, my brother went alongwith his friend Sachin son of Silak Ram, caste Jat, resident of village Jasia at around 9.30 PM brother came back at around 3 AM and told me that In alongwith Rohit s/o Sitaram, Caste Lohar, Gaurav s/o Fateh, Caste Chamar, Ashwani s/o Ramesh, Caste Brahman and Muni s/o Raj Singh, Caste Jat were enjoying the party in the field of Sachin. During that party I had



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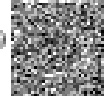
altercation with Rohit and Rohit had threatened to kill me. I told him to go to sleep, we will talk in the morning. I also went up for sleeping. After some time I heard the noise at the gate then I came down and shocked that my brother was lying near the stair and there was a lot of blood coming out from the mouth, nose and neck. There was a mark of knife injury on the right side of my brother's neck. My brother had died. Rohit alongwith his friends had given knife injury to my brother and killed him. I had inform to the police but you came on the spot and I had given this complaint for taking legal action against all.”

3. Succinctly stated, the only allegation, against the present petitioner, as culled out from the record is that he was present outside the house of the deceased at the time of occurrence. The issue, as to whether, the petitioner shared common intention with main accused Rohit, is a mixed question of fact and law, which is to be adjudicated by the learned trial Court concerned, at an appropriate stage.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

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

- (i) The only role attributed to the present petitioner is that he was present with the co-accused at the time of occurrence;***
- (ii) The main role is attributed to the co-accused, who has caused injury on the neck of the deceased;***
- (iii) There is no attribution that the petitioner has caused any injury to the deceased;***
- (iv) Petitioner has suffered incarceration of more than 02 years, and 09 months, as on today;***
- (v) The petitioner is not involved in any other criminal case;***



(vi) Out of the total 20 prosecution witnesses cited in the final report, 18 witnesses have already been examined till date.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. Per contra, the learned State counsel has opposed the grant of regular bail to the petitioner, and files a reply by way of affidavit of Sh. Vidyanand, HPS, Deputy Superintendent of Police, Sadar, Rohtak has been filed on behalf of respondent-State. The same is taken on record. Today learned State counsel has also placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent, District Prison (Rohtak), Haryana. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 02 years, 09 months and 21 days, as on today. A perusal of the custody certificate further reveals that the petitioner is not involved in any other criminal case. Learned State counsel on instructions, imparted to him by ASI Devi Singh, submits that petitioner is the one, who accompanied the co-accused at the time of occurrence, and he was present outside the house of the deceased. Learned State counsel also submits that there is a CCTV footage, which strengthens the case of the prosecution regarding the presence of the petitioner, outside the house of the deceased. Learned State counsel in addition submits that in the instant case, though the FIR was registered against 05 persons, however, during investigation one Munni, and Sachin were declared innocent, and three persons were sent to face the trial, including the present petitioner. Learned State counsel over and above submits that after conclusion of the investigation, the final report under Section 173 Cr.P.C., had already been filed on 16.11.2021, and the charges were framed on 22.10.2022. Learned State counsel finally submits that out of the total 20 prosecution witnesses



cited in the final report, 18 witnesses have already been examined till date, whereas, only two witnesses are left to be examined.

CONTENTS OF THE REPLY

6. The role of the present petitioner has been described in the reply, which reads as under:-

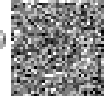
“That the specific role of petitioner is that he in collusion with co-accused has hatched criminal conspiracy to kill Vikas and he has been seen with co-accused in CCTV footage. At the time of incident the petitioner was standing in the street, and was keeping watch, while co-accused Rohit caused injuries to deceased with knife.”

7. Further it transpired from the reply that the weapon of offence which was used in the commission of crime has been recovered from co-accused Rohit @ Kalia.

ANALYSIS

8. 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.

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

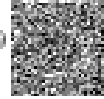


inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

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 “**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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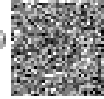
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29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern 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



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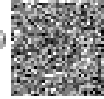
one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

12. 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 bifocal 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 of present his case than one remanded in custody. And if public justice is to be promoted. mechanical

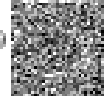


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detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary 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.”

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 petition is amenable for being allowed.

14. The reason for forming the above inference emanates from the factum that:- (i) There is no specific role attributed to the present petitioner, that he has caused any injury to the deceased, or he has entered into the house of the deceased; (ii) The petitioner has suffered incarceration of 02 yeas, 09 months and 21 days, as on today; (iii) Out of the total 20 prosecution witnesses cited in the final report, 18 witnesses have already been examined till date; (iv) The final report under Section 173 Cr.P.C., had already been filed on 16.11.2021, and the charges were framed on 22.10.2022 (v) No fruitful purpose would be served by keeping the petitioner behind the bars, (vi) Trial is not likely to conclude anytime soon.

FINAL ORDER

15. Considering the hereinabove made discussion, this Court deems it fit and 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.

16. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.
17. All pending application(s) stand **disposed** of accordingly.

10.07.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No