



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-8862-2024 (O&M)
Date of decision: 29.08.2024

Abdul Hameed ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Khalid Tauru, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. 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.196, dated 27.11.2022, under Section 302 IPC, read with Section 34 IPC, thereof, registered at Police Station City Tauru, District Nuh.

ALLEGATIONS AGAINST THE PETITIONER

2. Before this Court appreciate the submissions made by learned counsel for the petitioner, it is apt at this stage to deal with the prosecution case.

3. The prosecution agency was set into motion on a complaint made by one Farman, who is the brother of the deceased-Salman. The relevant extract of the complaint upon which the instant FIR has been

registered, reads as under:-

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“To the Incharge, P.S. City Tauru. Subject: For killing by intentionally hitting with car. Sir, respectfully submits that I, Farman son of Yusuf, resident of Village Chharara, P.S. Sadar Tauru, District Nuh state that my brother Salman was called by about half a dozen accused on Saturday afternoon to the liquor vend at Tauru Bypass Didhara under a well-planned conspiracy and at first, he was made to drink liquor by mixing with Pepsi and thereafter, he was brutally beaten up. During the fight, my brother Salman got injury, who on coming home at about 07:00 PM, told me, my uncle Rafiq and cousins that accused e Kazamdin alias Kazmu, r/o Village Didhara, Sahun Mian, r/oP Village Nizampur and 3-4 other people called him at liquor vend and brutally caused him injuries. When I, my uncle Rafiq and other family members alongwith my brother Salman reached at the place of occurrence at liquor vend, near Byepass, where on seeing Salman, accused present there started causing him beatings and on our seeing, one of the accused ran the car directly over my brother Salman. The accused driver drove the car back and forth several times and ran over my brother, due to which, he died at the spot. During this accident, one accused also died after being hit by the car. After committing the incident, accused fled from the spot alongwith the car. When I raised alarm, people gathered at the spot and one of them informed the police about the incident on number 112. After receiving the information, the police reached at the spot and by calling ambulance, took the bodies of the deceased youth to Nuh Hospital. Sir, the accused by deliberately committing this incident, killed my brother Salman. Hence, it is requested before you to register an FIR against above accused for the respective offences including the offence of murder and legal proceeding be initiated. It would be your great kindness. Thanking you, SD/- Farman”

***SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER***

4. In asking for the relief (supra), learned counsel for the petitioner submits that no specific role has been assigned to the present petitioner in the alleged crime. He further submits that the only role assigned to the present petitioner is that he has instigated the main accused Kajamddin @ Kajmu, who allegedly committed the instant crime. No specific injury has been attributed to the petitioner.

5. He also submits that on the fateful day, all the accused persons, and the deceased being friends, were having alcohol together, however, a quarrel took place between them, over an issue, among the main accused-Kajamaddin alias Kajmu and the deceased and thereafter, he drove his vehicle, i.e. car, and dashed the same against the deceased-Salman (brother of the complainant). Since the deceased-Salman was also under the influence of alcohol, therefore, he succumbed to the injuries, and one person Habib alias Murli, also sustained some injuries, in the same incident/occurrence, who later succumbed to the injuries.

6. He, in addition, submits that as per the CCTV footage of the place of occurrence, it was the main accused-Kajamaddin alias Kajmu, who was present in the car, whereas, the present petitioner was neither present in the car, nor the car belongs to him. Further, the petitioner has been involved in the instant matter only because he was present on the spot, at the time of the occurrence.

7. He over and above submits that no recovery was effected from the present petitioner, which could connect him to the alleged crime.

***SUBMISSIONS OF THE LEARNED STATE COUNSEL***

8. Per contra, the learned State counsel vociferously opposes the asked for relief of grant of regular bail to the petitioner, and submits that the petitioner and other co-accused with common intention committed the murder of the deceased-Salman, and further more, one another person namely Habib alias Murli, has also died after being hit by the car, during the said incident.

9. To lend vigor to his argument, learned State counsel has relied upon the reply dated 06.03.2024 filed by way of an affidavit of Sh.Mukesh Kumar, DSP, Tauru, District Nuh, which is already taken on record.

10. He further, on instructions imparted to him by the police official concerned, submits that after submission of final report on dated 23.02.2023, the charges have been framed on dated 30.01.2024, against the present petitioner, and other co-accused, and out of total 20 prosecution witnesses cited by the prosecution, only one witness has been examined so far.

11. He, in addition, files a custody certificate qua the petitioner, which is taken on record, and, it reflects that the petitioner has suffered incarceration of 01 year 09 months and 01 day as on today, and, he is not involved in any other criminal case.

ANALYSIS

12. 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.



13. *“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.

14. 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.

15. 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

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

16. 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 bi-focal 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 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.”

REASONS

17. In this case, as per the *post mortem* report the cause of death was due to shock Haemorrhage of Antimortom injuries.

18. From the perusal of the FIR, it transpires that in fact it was co-accused-Kajamadin alias Kajmu, who drove the car involved in the offence, and dashed the same against the deceased-Salman, and ran the same over the deceased, due to which he died on the spot, and during this incident, the petitioner has also hit one another person, who was standing nearby, namely Habib alias Murli, who also sustained injuries, which led to his death.

19. Further, the only role attributed the present petitioner is that he has instigated the main accused-Kajamddin alias Kajmu and no other criminal case is pending against the petitioner.

20. It is not disputed that as per the CCTV footage of the place of occurrence, it is only accused-Kajamddin alias Kajmu, who was seen to be driving the said car, and the present petitioner was not sitting in the said car. Therefore, the issue whether, the petitioner along with other co-accused, having common intention, is a disputed question of fact, which is to be



trial.

FINAL ORDER

21. Be that as it may be, considering the fact that the petitioner has suffered incarceration of 01 year, 09 months and 01 days, as on today, and as per his antecedent, he is not involved in any other criminal case, and further the conclusion of the trial will take long time as out of the total 20 prosecution witnesses, one prosecution witness has been examined till date, 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.

22. 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.

29.08.2024
Satyawan

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No