



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

226

CRM-M-9180-2024
Date of decision: 08.07.2024

SHANKAR MEHTAPetitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

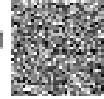
KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.441 dated 30.12.2021, under Sections 346 of IPC (under Sections 302 and 201 of IPC added later on), registered at Police Station Patran, District Patiala.

ALLEGATIONS AGAINST THE PETITIONER

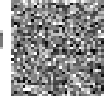
2. The gist of the allegations, as culled out from the FIR, is reads as under:-

“At this time it has been recorded that statement of one Laxmi Devi w/o Shyam Sharma resident of village Hathioda, PS: Bhiariganj, District Madepura (Bihar) presently PS Patran, District Patiala aged about 24 years, mobile no. 98550- 87696 written by ASI Labh Singh 85, PS: Patran has been received in the police station at the hands of C. Gagandeep Singh 748/PTA for registration of FIR against Angad



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Kumar Das s/o Togaye Das r/o village Hathioda, PS: Bhiariganj, District Madepura (Bihar) presently Chune Bhatti, Rajpura, the subject of which is as below, " stated that I am resident of aforesaid address and I am a domestic woman. I was married to Shyam Sharma resident of village Hathioda, PS: Bhiariganj, District Madepura (Bihar) since 2012. Then myself and my husband firstly came to Rajpura in context of work and now for about 3 years we have been residing in the house of Joga Singh s/o Jagir Singh of Village Niyal on rent. My husband is doing the work of POP. On 26.12.2021 myself and my husband were at our house itself. Then Angad Kumar Das s/o Togaye Das r/o village Hathioda, PS: Bhiariganj, District Madepura (Bihar) presently Chune Bhatti, Rajpura came alongwith him two unknown persons were there. All these three persons had come on Chhota Hathi and sat to my husband that they will get my husband work of POP and he should accompanied them. That my husband went alongwith them at about 8:30 PM. I called my husband at about 11:30 pm who said they were eating and drinking, I should go to sleep and he will come in the morning. I have been searching for my husband till now and I have not come to know about my husband Shyam Sharma. There were some money transaction of my husband with Angad Kumar, the phone of my husband Shyam Sharma is switched off, my husband Shyam Sharma has been kept concealed somewhere by Angad Das and two unknown persons. Today myself and alongwith me Sanjay Kumar s/o Kokai Das was coming to you in the police station for giving information and you



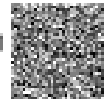
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have met us at Bhagat Singh Chowk Patran. That legal action be taken against them. I have recorded my statement, heard and same is correct.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

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

- (i) Petitioner has suffered incarceration of more than 02 months and 05 months, as on today;*
- (ii) The petitioner is not involved in any other criminal case;*
- (iii) The name of the petitioner is not figured out in the FIR, rather he was involved in the instant FIR, on the disclosure statement of co-accused, and the only allegation attributed to the present petitioner is that he has helped the main accused Angad Kumar Dass in disposing of the dead body;*
- (iv) There is no allegation that the petitioner has caused any injury to the deceased, or he has any common intention to cause injury to the deceased;*
- (v) Learned counsel for the petitioner further draws attention of this Court to the statement of the prosecution witness, who stepped into the witness-box during trial, and submits that the main star witness i.e. the wife of the deceased, who is the complainant in the instant case, and the real brother of the deceased, have turned hostile, and on account of these two witnesses turning hostile, the prosecution has failed to establish the identity of the dead body, as there is no other evidence including the report of DNA on the record;*



(vi) Out of the total 19 prosecution witnesses cited in the final report, 18 prosecution witnesses have been examined till date, and therefore, there is no apprehension of interfering in the administration of justice, in case the petitioner is released on regular bail.

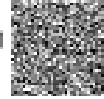
SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Per contra, the learned State counsel, who is in receipt of advance notice, has opposed the grant of regular bail to the present petitioner, and reply by way of affidavit dated 08.07.2024, of Sh. Daljit Singh Virk, PPS, Deputy Superintendent of Police, Sub Division Patran, District Patiala, has been filed on behalf of respondent-State, and submits that since the trial is at the fag end, therefore, the petitioner does not deserve the relief of regular bail. Learned State counsel has placed on record the custody certificate of the petitioner, as issued by the Additional Superintendent of Central Jail Patiala. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 02 years, 05 months and 16 days, as on today. A perusal of the custody certificate further reveals that the petitioner is not involved in any other criminal case.

ANALYSIS

5. 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.

6. “*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*

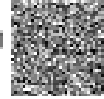


Baliay”, 1977 AIR 2447, 1978 SCR (1) 535. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

7. 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.

8. 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



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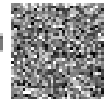
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29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern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



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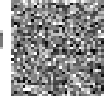
to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

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."

9. 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

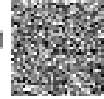


affected.

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 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?

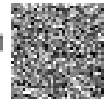


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Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional 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.”

10. 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.

11. The reason for forming the above inference emanates from the factum that:- (i) there is no allegation whatsoever against the present petitioner, that he is the person who caused injuries to the deceased, rather it is case of prosecution that he has helped the main accused Angad Kumar Dass in disposing of the dead body of the deceased; (ii) The petitioner has suffered incarceration of 02 years, 05 months, and 16 days, as on today; (iii) The dead body of the deceased was recovered at the behest of the co-accused Angad Kumar Dass; (iv) The relevant extract which strengthens the above observation is reads as under;-

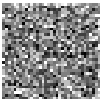


“That on 26.12.2021, the accused Angad Kumar Dass was apprehended by the police and during interrogation, the accused Angad Kumar Dass admitted that he along with Anand Kumar Dass took Shiyam Sharma from his house in his car No. PB-39-J-2156 make Kia colour on the pretext of providing him POP work and brought him at a marriage palace which was undergoing construction situated at Village Peer Jain, District Fatehgarh Sahib. Thereafter, they consumed alcohol under anger and gave beatings to Shiyam Sharma with bamboo stick (Bali), however, he died in the meantime. Then they removed the clothes of Shiyam Sharma and put his dead body in a gunny bag. Thereafter, they put the dead body of Shiyam Sharma in the boot of the car and Shankar (present petitioner) also accompanied them and took the dead body in the forest of Village Palheri, PS Mullanpur Garibdass with an intention to dispose-of the dead body and threw the body there. Thereafter, they threw the clothes and mobile phone of the deceased in the Bhakhra canal. Above mentioned Angad Kumar Dass also stated that the bamboo stick (Bali) used by them in the crime has been kept hidden by him in his car No. PB-39-J- 2156 and he has parked the said vehicle containing bamboo stick behind the marriage palace situated at Village Peer Jain, District Fatehgarh Sahib;”

(v) Laxmi Devi wife of the deceased, and Sanjay Kumar, real brother of the deceased, who stepped into the witness-box as PW6, and PW7 respectively, did not support the case of the prosecution, (vi) The petitioner is not involved in any other criminal case.

FINAL ORDER

12. Considering the nature of the allegations against the present petitioner, the quality of evidence, and the days of incarceration suffered by the present petitioner, 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.

13. 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.

14. All pending application(s), if any, stand **disposed** of accordingly.

08.07.2024
amandeep

(KULDEEP TIWARI)
JUDGE

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