

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

219

CRM-M-9989-2024  
Date of decision: 25.04.2024

VINOD

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Harsh Jain, 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.1330 dated 05.11.2022, under Sections 392 of IPC, and under Section 25 of the Arms Act, (Sections 201 and 34 of IPC, & Section 25(1-B) (a) of Arms Act, were added later on), registered at Police Station Hisar Sadar, District Hisar, Haryana.

ALLEGATIONS AGAINST THE PETITIONER

2. The gist of the allegations, as culled out from the order dated 08.01.2024, passed by the Additional Sessions Judge, Hisar, reads as under:-

*"In brief, the case of prosecution is that on 05.11.2022 complainant Rajesh son of Inder Sen, arrived in the Police Station and moved a written complaint alleging that he was a resident of village Rawat Khera and was involved in the business of cattle fodder. On 04.11.2022, he after loading his pickup truck No. HR-39F-3057 with fodder/chaff*

*was returning to his village and was passing through Rajgarh road. Suddenly his tyre got punctured near Shapur-Ludas cut. He was changing the tyre when three unknown persons came on motor-cycle splendor without number-plate and pointed a pistol at him They asked him to hand over whatever he had. One of them took his wallet, money and mobile phone. The accused had taken away his mobile, Rs.20000/-, his purse containing ATM card, license and Aadhar card. He pleaded for appropriate action against the culprits. Upon the information, formal FIR was registered and investigation was commenced. During investigation, spot inspection was conducted, rough site plan was prepared and statements of witnesses were recorded. Initially, investigation was conducted by DSP, Hisar-II and Section 34 IPC was incorporated in the FIR. Subsequent, investigation was conducted by ASI Yogender Singh and then ASI Dharambir. Lateron, investigating was conducted by PSI Janak. Accused Sunil @ Matri was formally arrested on 17.10.2023. He got recovered the mobile phone snatched in the instant case and also got the place of occurrence demarcated. On 18.10.2023, accused Rakesh was arrested. He got recovered a pistol 315 bore and motor-cycle having registration No. HR-20AV3921. Sketch of the pistol was prepared and it was converted into a parcel sealed with seal inscription JS/1. Accused also got the place of occurrence demarcated. Further investigation was conducted by ASI Sandeep and Section 201 IPC was incorporated in the FIR. On 12.11.2923, accused Vinod was formally arrested. The accused got recovered Rs.1000/- out of his share of loot. Section 25(1- B)(a) of Arms Act was incorporated. Scaled site plan of place occurrence was got prepared and sanction for prosecution was obtained from District Magistrate. After completion of investigation, report Under Section 173 Cr.P.C. was submitted in the Court on 19.12.2023."*

### **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) The petitioner has not been named in the present FIR;***

*(ii) Recovery of Rs.1,000/- is shown to be effected from the present petitioner, and that too after one year;*

*(iii) The disclosure of co-accused cannot be read against the present petitioner, except that there is no incriminating evidence to connect the petitioner with the crime involved;*

*(iv) Petitioner has suffered incarceration of more than 05 months, as on today, and the trial is yet to commence.*

**SUBMISSIONS OF THE LEARNED STATE COUNSEL**

4. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent, Central Jail No.1 (Hisar), Haryana. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 05 months and 12 days, as on today. Learned State counsel on instructions, imparted to him by SI Harpool, has opposed the grant of regular bail to the present petitioner, on the ground that the petitioner is involved in highway robbery. Learned State counsel further submits that the petitioner is stated to be involved in two other criminal cases. Learned State counsel also submits that the charges in the instant case has already been framed way back on 25.02.2024, and out of the total 13 prosecution witnesses cited in the final report, none has been examined so far.

**ANALYSIS**

5. “*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.

6. 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.

7. 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.”*

8. 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.*

9. 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.

10. The reason for forming the above inference emanates from the factum that:- (i) Though the petitioner is stated to be involved in two other criminal cases, however, these are not of similar nature; (ii) The petitioner has suffered incarceration of 05 months and 12 days, as on today; (iii) The recovery which is stated to be effected from the present petitioner is of Rs.1,000/-, and whether that recovery would connect the present petitioner with the alleged crime or not, is a moot point, which is required to be adjudicated during the trial; (iv) The charges in the instant case has already been framed way back on 25.02.2024, and out of the total 13 prosecution witnesses cited in the final report, none has been examined so far (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**

11. 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.

12. 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.

13. All pending application(s) stand disposed of accordingly.

25.04.2024  
amandeep

(KULDEEP TIWARI)  
JUDGE

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