

2024:PHHC:050841

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

CRM-M-10960-2024

Date of Decision : April 16, 2024

RAM KARAN

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Saleem Ahmed, 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.274, dated 19.10.2023, under Sections 307, 323 and 506 read with Section 34 of the IPC, registered at Police Station Lakhan Majra, District Rohtak.

ALLEGATIONS AGAINST THE PETITIONER

2. The allegation against the petitioner is that he gave three spade blows on the head and forehead of the complainant-Rohit, on account of some property dispute.

3. The prosecution agency was set into motion on a complaint made by aforesaid Rohit Kumar. The relevant extract of the FIR reads as under:-

“To, The SHO Sahib, Police Station Lakhan Majra. Sir, It is requested that I am Rohit Kumar S/o Rajender Singh, resident of village Nandal. My grandfather Fateh Singh has installed a tubewell in the field, which we all use one by one. Yesterday on 18.10.2023 in

the evening, I had put oil in the engine. Today on 19.10.2023 at about 7 o'clock, when I went to the field in the morning, my uncle Rajbir and his son Ram Karan were running the tubewell there. When I told to them about filling of oil, then Rajbir immediately started abusing me and slapped me on my face. When I protested against this, then Ram Karan son of Rajbir gave a spade blow me on my head, I fell down, then he again gave spade blow on my head, which hit at my forehead. He time and again gave spade blow on my head with intention to kill me. In the meanwhile, Shakuntla, Geet and Ankush came at the spot and attacked me with danda, kick and fist. When I raised alarm 'Bachao-Bachao' then my brother Rakesh came there, after seeing him they all fled away from there and were threatening to kill me. Thereafter my brother took me on his motorcycle to Police Station Lakhan Majra, where police got done my medical. After getting first aid from CHC Lakhan Majra, doctor referred me to PGIMS Rohtak. It is requested to you that legal action be taken against the accused persons. I have given my written complaint to CHC Lakhan Majra. Sd/- Rohit Mukar. Applicant Rohit Kumar s/o Rajender Singh, Village Nandal, District Rohtak, Mobile: 9416929387.”

It transpires from the aforesaid FIR that the petitioner had given two spare blow injuries.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

4. In asking for the relief (*supra*), learned counsel for the petitioner submits that the co-accused-Rajbir, has been extended the benefit of regular bail by the learned trial Court concerned, and the petitioner is behind bars since last six months, and the trial is yet to start as no prosecution witness has been examined till date. Further, the petitioner is not involved in any other criminal case.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. *Per contra*, the learned State counsel opposes the asked for relief of grant of regular bail, on the ground that the case of the petitioner is entirely different from the case of co-accused-Rajbir, as the petitioner is the person who gave three injuries to the victim/complainant, out of

which, one injury was declared to be dangerous to life, which is on the head of the victim.

6. He further, on instructions imparted to him by ASI Nav Rattan, submits that the final report has been filed on 16.12.2023 and the charges have been framed on 08.04.2024, and out of total 14 prosecution witnesses cited by the prosecution, none has been examined so far.

7. He also files a custody certificate *qua* the petitioner, which is taken on record, and, it reflects that the petitioner has suffered incarceration of 5 months and 26 days as on today, and, he is not involved in any other criminal case.

ANALYSIS

8. “*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.

9. 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.

10. 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.”

11. 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.

12. 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

13. Be that as it may be, considering the fact that the petitioner has suffered incarceration of 5 months and 26 days, as on today, and as per his antecedent, he is not involved in any other criminal case, coupled with the fact that dispute is between amongst the family members with regard to some property, and further the co-accused-Rajbir has already

been extended the benefit of regular bail by the learned trial Court concerned, and further the conclusion of the trial will take long time as out of the total 14 prosecution witnesses, none has been examined till date, this Court deems it 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.

14. 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.

April 16, 2024
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(KULDEEP TIWARI)
JUDGE

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