



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-12597-2024 (O&M)
Date of decision: 16.05.2024

PHOOL KUMAR

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Saurabh Dalal, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, AAG 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.454 dated 29.09.2022, under Sections 323, 302 and 506 of IPC, registered at Police Station Sampla District Rohtak.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a complaint made by one Jitte son of Khimchand, the relevant extract of the same reads as under:-

"To, the S.H.O. Police Station Sampla. Sir, the request is that I Jite son Khimchand resident of Ward No. 5 Sampla, I am an agriculturist, I have two boys, elder boy Phool Kumar and younger boy Rajkumar, on the night of 25.09.2022 at about 10 o'clock, both brothers Phool kumar and Rajkumar had a quarrel with each other, at that time Phool Kumar threatened his brother Rajkumar to kill him, I got them separated, at night both brothers Phoolkumar slept in his house and Rajkumar in his plot near the buffaloes, during the night, PhoolKumar got up and injured his brother Rajkumar and ran away, I came to know on own way that during the night, Phool Kumar has hurt his brother Rajkumar,



then on the next day on 26.09.2022 in the morning. At around 06 o'clock, Krishan son of Sardar resident of Sampla took Rajkumar in an injured condition, admitted him to PGIMS Rohtak, where Rajkumar's treatment is going on in ICU PGIMS Rohtak, Rajkumar's condition remains critical, both the brothers often used to exchange verbal abuses on small things among themselves, due to which these two brothers had a discord among themselves, legal action should be taken against Phool Kumar.

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 is behind the bars since 02.12.2022;

(ii) The material witnesses cited by the prosecution has turned hostile, therefore, there is every likelihood that the petitioner would earn acquittal, as the prosecution has miserably failed to substantiate the allegations against the present petitioner;

(iii) Even if we believe the case of the prosecution as a gospel truth, it is only the offence under Section 304 of IPC is made out;

(iv) Out of the total 23 prosecution witnesses cited in the final report, only 05 prosecution witnesses have been examined till date.

CONTENTS OF THE REPLY

4. This Court on 15.03.2024, had asked the learned State counsel to file a detailed reply to the instant petition, and in response to that, reply by way of affidavit dated 04.05.2024, of Sh. Rakesh Kumar, HPS, DSP, Sampla, Rohtak has been filed on behalf of respondent-State. The same is taken on record. A perusal of the reply (supra) reveals that, initially the FIR was registered under Sections 323 and



506 of IPC, and thereupon on 01.10.2022, Section 308 of IPC, was added by the Police. A perusal of the reply further reveals that on 04.10.2022, Police received an information that during treatment, injured Raj Kumar had unfortunately died, and the Police deleted Section 308 of IPC, and added Section 304 of IPC. Thereupon the petitioner was arrested on 02.12.2022, on the same very day, Police deleted Section 304 of IPC, and added Section 302 of IPC, and the supplementary statement of the father of the present petitioner was recorded, wherein, he alleged that it was the petitioner, who under the influence of alcohol, and also due to land dispute, committed the murder of his own brother.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. On the other hand, learned State counsel has opposed the grant of regular bail of the present petitioner, and submits that petitioner is the sole accused, and his own father has instituted the instant FIR, and not only that even the supplementary statement was got recorded by him, wherein, he alleged that it was the present petitioner, who has caused injuries to the victim, which ultimately proved to be fatal, and his own real brother succumbed to injuries.

6. Learned State counsel on instructions, imparted to him by ASI Ravinder Singh, admits the fact that three witnesses, including the main star witness i.e. father of the present petitioner, has turned hostile. Learned State counsel further submits that out of the total 23 prosecution witnesses cited in the final report, 05 prosecution witnesses have already been examined.

ANALYSIS

7. 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.

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 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.

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 ***“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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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."

11. 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 or 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.”

12. 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.

13. The reason for forming the above inference emanates from the factum that:- (i) The main star witness i.e. father of the present petitioner, has turned hostile;



(ii) The petitioner is behind the bars since 02.12.2022; (iii) Learned State counsel further submits that out of the total 23 prosecution witnesses cited in the final report, 05 prosecution witnesses have been examined so far. (iv) The petitioner is not involved in any other case (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

12. 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.

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) stand disposed of accordingly.

16.05.2024

amandeep

Whether speaking/reasoned.

Whether Reportable.

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Yes/No

Yes/No

(KULDEEP TIWARI)

JUDGE