

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

CRM-M-12214-2024

Date of Decision : March 14, 2023

AJAY ALIAS AJJU

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr.Amit Chaudhary, Advocate,
for the petitioner

Mr.Abhinash Jain, DAG, Haryana.

KULDEEP TIWARI. J.(Oral).

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioner pray for grant of regular bail in case FIR No.511, dated 11.12.2023, under Sections 148, 149, 323, 307 and 506 of the IPC and under Section 25 of the Arms Act, registered at Police Station Chandhut, District Palwal.

ALLEGATIONS AGAINST THE PETITIONERS

2. One Rajesh Kumar son of Krishan Lal got recorded his statement which led to the registration of instant FIR, wherein, he alleged that on dated 10.12.2023, at 9:00 p.m. he received a call from his nephew namely Deepak, wherein he stated to the complainant that Ajju (present petitioner), Deepak, Bobby, Shekhar, Jassu and Ravi (cousin of Ajju), Kuldeep, Sandeep, and 15-20 other persons, have surrounded him at Chandhat Chowk, and they were given beatings to him. Whereupon, he

alongwith his cousin Dheeraj, reached at the spot, and found that Deepak was being assaulted by the accused persons, and both of them with folded hands tried to rescue Deepak, but all the accused were under the influence of alcohol, and upon this, present petitioner and Deepak son of Kalyan, started firing gunshots on the complainant and Preetam, due to which both of them received pallet injury on their head. The other co-accused also caused injuries to the injured, with their respective weapons. When the police party reached at the spot, all accused persons ran away from the spot, and the complainant party was taken to the hospital for their treatment.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. Learned counsel for the petitioner submit that infact there is huge difference between the ocular testimony, and the medical record. As per the MLR, no pallet injury was suffered by Deepak or Preetam. For this, he draws attention of this Court to the MLR, as attached with the present case. He further submits that the recovery of illegal weapon was effected from him, but the MLR clearly defies the ocular version of the complainant, that such weapon was never used.

4. He further submits that though there is one more criminal case is pending against the petitioner, but in one case he has already been acquitted of the charges framed, as against him, and in another case he is already on bail.

5. He also submits that the co-accused Deepak, who is on similar footing, has already been extended the benefit of regular bail by the learned trial Court concerned itself.

6. He also submit that the petitioner has already suffered incarceration of more than 2 months, and the conclusion of trial will take long time.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. *Per contra*, the learned State counsel vociferously opposed the asked for relief on the ground that the petitioner is a habitual offender, and in future as well there are chances that he will indulge in such kind of offence, if released on regular bail. He further raises apprehension that the petitioner may influence the prosecution witnesses.

8. He has placed on record a custody certificate *qua* the petitioner, which makes revelation that the petitioner has suffered incarceration of 2 months and 16 days, as on today.

9. He further submits that the final report has been filed on dated 21.02.2024, in which the prosecution has cited total 19 witnesses, and the charges are yet to be framed.

ANALYSIS

10. “*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.

11. 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.

12. 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.”

13. 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.

14. 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

15. Be that as it may be, considering the fact that the co-accused who is on similar footing has already been extended the benefit of regular bail, and the petitioner has suffered incarceration of 2 months 16 days, as on today, and trial will take some time to conclude, coupled with the fact

that he has earned acquittal in one criminal case, whereas, in another he is already on bail, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner, during the pendency of the trial. 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 the bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

16. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as is involved herein, and further if he tries to influence the prosecution witnesses in any manner, 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.

March 14, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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