

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

215

CRM-M-13546-2023
Date of decision: 05.08.2024

GULSHAN ALIAS GULLU
Versus
STATE OF HARYANA
....Petitioner
...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

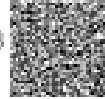
KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.537 dated 20.07.2020, under Sections 302, 148, 149, 341 and 120-B of IPC, and under Section 25 of the Arms Act, registered at Police Station HTM Hisar.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a complaint made by one Om Parkash (complainant), and as per his statement, his son (Mukesh) was shot dead by number of assailants. In his initial version, he stated that first of all, one Sunil alias Poli fired a shot upon his son (Mukesh) from his pistol. Consequently his son left the scooty, and ran towards the street, but Balram, Gulshan, and 3-4 other boys fired shots upon his son (Mukesh), indiscriminately, and his son (Mukesh), since deceased, fell on the ground. The relevant extract of the FIR, reads as under:-

*Statement of Om Parkash s/o Ram Krishan caste BCB r/o Hanuman
Mandir Dani Badwali Hisar and aged 61 years mobile no. 9992501875,*



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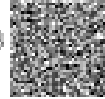
stated that I am the resident of above mentioned address and I have a vegetable shop at old Sabzi Mandi, Hisar. I have two sons. Elder one is Pawan and younger is Mukesh Pardhan. Both are married. My younger son Mukesh @ Pardhan is living with his children at Sainiyaan Area in Hisar. On 20.07.2020 at around 4 PM my younger son Mukesh @ Pardhan was coming back home from Mahabir colony for some personal work scooter of his uncle (Chacha) bearing registration no. HR20AF5993. When my son reached near Hanuman Mandir Dani Badwali, I and our family member Abhishek @ Bharti s/o Sham Lal r/o Sainiyaan Mohalla Hisar were already present there after coming back from fields, then 6-7 boys came on 2-3 motorcycles. They were armed with Pistols and they blocked the way of my son. Sunil @ Poli, Gulshan @ Goldy, Balram @ Lafad were amongst them. Sunil @ Poli fired the first shot at my son while he was sitting on the scooter. After being hit by fire shot, my son left his scooter and ran towards the street. After running for some time, then Balram, Gulshan and 3-4 other boys fired shots continuously. Then my son fell down. Then I and Abhishek @ Bharti started shouting then all the boys ran on their motorcycles from there with their respective weapons. I and Bharti arranged a vehicle and took my son to Sapra Hospital Hisar. Doctor advised us to take my son immediately to GH Hisar. We took my son to GH Hisar. Doctor declared him dead. My son Mukesh and the above said boys had old enmity amongst them.”

During investigation the present petitioner, along with co-accused Sunil alias Poli were arrested on 22.07.2020.

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) Om Parkash (complainant) has falsely implicated the present



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petitioner in the instant case;

(ii) Learned counsel for the petitioner placed reliance upon the reply filed by the prosecution, wherein, the only role assigned to the present petitioner is that, he only supplied firearms and ammunition to the main accused, after hatching a conspiracy;

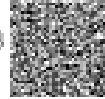
(iii) The co-accused persons namely Sunil alias Poli & Balram @ Lofar @ Lafar, have already been extended the relief of regular bail by the Co-ordinate Bench of this Court, in CRM-M-17401-2022, and CRM-M-2933-2023, vide orders dated 22.12.2022, and 26.02.2024, respectively.

(iv) Petitioner has suffered incarceration of more than 04 years, as on today.

(v) Out of the total 34 prosecution witnesses cited in the final report, 13 prosecution witnesses have already been examined till date.

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 04 years 07 days, as on today. A perusal of the custody certificate further reveals that the petitioner is involved in one more criminal case, however, he is stated to be on bail in that case. Learned State counsel further submits that out of the total 34 prosecution witnesses cited in the final report, 13 prosecution witnesses have already been examined till date.

**CONTENTS OF THE REPLY**

5. As per the reply dated 02.03.2024, filed on behalf of respondent-State, following role is assigned to the present petitioner:-

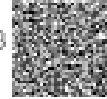
“That as far as the role of the petitioner/accused, it is submitted that the allegations are serious in nature. The complainant specifically named the petitioner/accused in the FIR as well as in his deposition before the court of Ld. ASJ, Hisar. That the petitioner/accused had hatched conspiracy to commit the crime with the other accused and he provided firearms and ammunition to them. Custody Certificate of petitioner/accused is annexed as Annexure R-3.”

ANALYSIS

6. 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.

7. *“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.

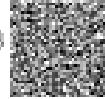
8. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take



into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

9. 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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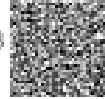
29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling 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."

10. 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

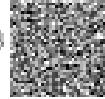


principles of bail thus :

“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.

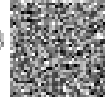
11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to 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.



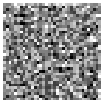
Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal.”

11. 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.

12. The reason for forming the above inference emanates from the factum that:- (i) The petitioner is on equal footing as that of his co-accused namely Sunil alias Poli & Balram @ Lofar @ Lafar, who have already been extended the relief of regular bail by the Co-ordinate Bench of this Court, in CRM-M-17401-2022, and CRM-M-2933-2023, vide orders dated 22.12.2022, and 26.02.2024, respectively; (ii) The petitioner has suffered incarceration of 04 years and 07 days, as on today; (iii) Out of the total 34 prosecution witnesses cited in the final report, 13 prosecution witnesses have already been examined till date. (iv) No fruitful purpose would be served by keeping the petitioner behind the bars, (v) Trial is not likely to conclude anytime soon.

FINAL ORDER

13. 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.

14. 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.
15. All pending application(s) stand **disposed** of accordingly.
16. 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.

05.08.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. :

Whether Reportable. :

Yes/No

Yes/No