

2024:PHHC:004802

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-M-14015-2023

Date of Decision : January 15, 2024

KARAN KUMAR

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Davneet Sangwan, 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, who has been summoned under Section 319 Cr.P.C.to face trial alongwith other co-accused in case FIR No. 317 dated 19.07.2020, under Sections 323, 324, 302 of the IPC and under Section 25 of the Arms Act, 1959, registered at Police Station City Farakpur, District Yamunanagar.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a complaint made by Lalit Kumar. The gist of the allegations as recorded by the learned trial court concerned, at the time of declining the plea of regular bail application reads as under:-

“2. Brief facts of the case are that on 02.07.2020, a telephonic

information was received at Gandhi Nagar Chowki from the Civil Hospital, Yamuna Nagar to the effect that one Lalit Kumar son of Puran Chand was admitted in the hospital on account of sustaining injuries in a fight. Upon this, HC Yusuf Ali reached Civil Hospital, Yamuna Nagar. He obtained MLR and medical rukka etc. The injured was declared unfit for giving statement. Thereafter, on 09.07.2020, statement of Lalit Kumar was recorded to the effect that on 01.07.2020 at around 09:40 P.M., Happy, Happy's wife and his neighbourer Ashu alias Chidiya met him near Shiv Temple. On the asking of complainant, Happy told him that he was going to his (Happy's) in-law's place and on his asking, complainant accompanied them. They stopped at some distance from the house of Happy in-laws. Happy's wife went inside her parental house and after about 5-6 minutes, she came out of her parental house after about 5-6 minutes. In the meantime, Happy's father-in-law and Happy's brother-in-law came there and an argument started between them and said Happy. He (complainant) tried to pacify them, but they did not pay any heed to him and he was pushed aside by Happy's father-in-law. He was asked to leave whereupon he started retreating from there. Thereupon, Happy's brother-in-law threatened him (complainant) that he would see him in 15 minutes. Thereafter, he, Happy, Happy's wife and Ashu started returning from Happy's in-laws place. When they reached near Bohra Brick Kiln Office and he was in the process of urination, Happy's brother-in-law hit him with a sharp edged weapon on his neck. When he looked back, Happy's brother-in-law fled. Thereupon, he got unconscious and fell on the ground. When he gained some consciousness, he ran towards his house. He was taken to Civil Hospital, Yamuna Nagar for treatment by his brother namely Jaipal. Based on said facts an FIR bearing registration No.317 dated 19.07.2020 was registered at P.S. Farakpur, Yamuna Nagar, under Section 323 & 324 of IPC. On 01.07.2020, Investigating Officer HC Yusuf Ali received an information to the effect that Lalit Kumar son of Puran Chand, who had sustained injuries on 01.07.2020 and was admitted at the Civil Hospital, Yamuna Nagar on 19.07.2020, had died during the course of treatment. Upon this, Section 302 IPC was added. The Post-mortem upon dead body of Lalit Kumar was conducted. On 21.07.2020 Happy's brother-in-law was joined into investigation, however, he was found innocent. Subsequently, investigation of the case was conducted by Sub Inspector Mohan Lal. During investigation, one Pal Yadav was joined into investigation, who suffered his confessional/disclosure statement on 24.07.2020 to the effect that on 01.07.2020 at about 8:00 PM, he was returning to his house on his motorcycle. On the way, he met three boys and one lady. He blew the horn for providing him side. He did not know the names of the said three persons. They stopped him and started assaulting and abusing him. He went to his house. After some time, he saw that some persons had gathered little ahead of his street and lot of noise was being made. He went at the spot where he met the said three boys and lady. They again abused him and assaulted him. He got enraged and brought a knife from his house. He followed them. At about 9:45 PM, when the said boys and lady had reached near Bohra Brick Kiln Camp and while one of them, whose name lateron revealed as Kaka, was urinating, he gave knife blow on Kaka's neck and also on his hand. Thereafter, he fled from the spot. He has hidden the knife in his residential house situated in Shiv Colony, Camp, Yamuna Nagar which he get recovered in pursuance

of his disclosure statement. He got recovered the blood stained knife and also got demarcated the place of occurrence. Section 25 of Arms Act was added. Statement of witnesses were recorded. After completion of investigation, final report under Section 173 of Cr.P.C. was presented before the court.”

3. In the instant matter, the petitioner though alleged to be the main accused, but was declared innocent by the investigating agency, as the weapon of offence was used by the co-accused Pal Yadav, and recovery of the same was also effected from him. The final report *qua* the other co-accused was filed on dated 28.09.2020 and the petitioner was put in column No.2. Thereupon, the learned trial Court concerned framed the charges against the co-accused Pal Yadav on dated 26.02.2021. During the trial one prosecution witnesses Jai Pal was examined, and thereupon, on an application filed under Section 319 of the Cr.P.C., the petitioner was ordered to be summoned to face the trial alongwith other co-accused Pal Yadav vide order dated 14.12.2021.

4. Earlier, the petitioner did not cause appearance in pursuance to the summoning order, which resulted into declaration of the petitioner as a proclaimed offender, by the learned trial Court concerned, vide order dated 16.07.2022, and finally, he was arrested on dated 08.12.2022, and since then the petitioner is behind the bars and has suffered incarceration of about one year.

5. In consequence of the proclamation order dated 16.07.2022 an FIR No.268, dated 08.12.2022, was registered under Section 174-A of the IPC, in which the petitioner was convicted and was sentenced to undergo imprisonment already undergone by him.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

6. Learned counsel for the petitioner submits that it is not under dispute that the petitioner is not involved in any other case, and now after framing of charges in the main case, out of the total 25 prosecution witnesses, 9 have been examined before the learned trial Court concerned.

Status report dated 14.01.2024, by way of an affidavit of Sh. Kanwaljeet Singh, DSP, Yamunanagar, has been filed today in Court, by the learned State counsel, which is taken on record.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. On the other hand, learned State counsel submits that he does not dispute the facts as narrated by the learned counsel for the petitioner, although, he opposes the grant of regular bail to the petitioner on the ground that he was earlier declared as a proclaimed offender, and he may again run away from the clutches of law, if released on bail.

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 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 “***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. Considering the fact that earlier the present petitioner was declared innocent, and he has already been summoned to face trial under Section 319 of the Cr.P.C. and the conclusion of trial may take long time, as out of the total 25 prosecution witnesses, only 9 have been examined, this Court deems it appropriate to grant the concession of regular bail to the present 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 **heavy** bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

14. However, it is clarified that in future, if 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.

January 15, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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