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2024:PHHC:116664



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-14926-2024
Date of decision: 05.09.2024

AMANDEEP SINGH ALIAS GOLDYPetitioner
Versus

STATE OF PUNJAB ...Respondent

CRM-M-15096-2024

TARSEM SINGH ALIAS TARSEM LAL ALIAS SEEMAPetitioner
Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. S.K.Chawla, Advocate
for the petitioner in CRM-M-14926-2024

Mr. A.S.Sekhon, Advocate,
for the petitioner in CRM-M-15096-2024

Mr.Pardeep Bajaj, DAG, Punjab.

Mr. Mandeep Singh, Advocate,
for the complainant.

KULDEEP TIWARI, J.(Oral)

1. Since both the petitions are arising out of a common FIR, through which a common relief has been sought by the petitioners, therefore, being amenable for a common decision, same are taken up together.

2. Through the instant petition, the petitioners crave for indulgence of this Court for them being enlarged on regular bail, in case FIR No.352 dated 07.10.2023, under Sections 304, 452, 325, 323, 148, 149 of IPC, registered at Police Station City Faridkot.

ALLEGATIONS AGAINST THE PETITIONER

3. The case as set up by the prosecution is that the instant FIR was registered on a statement made by one Baldev Singh, son of Atma Singh, which became the bedrock for the registration of the instant FIR. Initially the FIR was registered under Sections 302/34, 148 and 149 IPC, however, on the basis of the medical opinion, the offence under Section 302 IPC, was deleted, and offence under Section 304 IPC, was added later on.

4. Even during the trial, the learned trial court concerned, proceeded to frame charges against the petitioners under Sections 304, 452, 325, 323, 148 and 149 of the IPC.

5. As per the case of the complainant, one accused-Sandeep alias Bony alongwith 8-10 other persons, caused injuries to Arshdeep Singh, Jashandeep Singh, Tejinder Singh and Mohit Kakkar and furthermore, Tejinder Singh succumbed to the injuries, as caused by accused persons in the instant occurrence.

The relevant part of the FIR reads as under:-

“Statement of Baldev Singh son of Atma Singh son of Lakha Singh, resident of Sadha Wala, now Dream City, Machaki Mal Singh road, Faridkot, aged about 55 years, 81465-45613 stated that I Mobile No. am resident of aforesaid address and for the last 4/5 years I have been residing in Dream City, Faridkot along with my family. I am serving in Police Department 6-IRB and my duty is in Refinery, Bathinda. I have two children, out of whom Sukhjinder Singh is my elder son, Tejinder Singh is younger and my daughter is Sukhpreet Kaur. Both elder children are married and Tejinder Singh is unmarried. Sukhjinder Singh is doing private job at Chandigarh. Tejinder Singh is residing with us. In front of my house in the street a bench is lying where usually ladies and other persons sits. Arshdeep Singh and Jashandeep Singh, sons of Lakhwinder Singh Sodhi also sits on the said bench. On these boys 05-10-2023, were sitting on the bench, then Sandeep Singh alias Bony son of Tarsem, whose house is one house away from our house, had stopped sons of

Lakhwinder Singh from sitting on the bench Today on 06-10-2023 at about 09.30 P.M., both sons of Lakhwinder Singh were coming on feet, to whom Bony stopped by calling them and they started quarrelling with each other. My son Tejinder Singh started intervening to separate them and in this course 08/10 more persons who had come with Bony, started beating them and while I was witnessing, Lakhwinder Singh and his mother also came running there and Bony and all these boys inflicted number of injuries on the person of his mother, Lakhwinder Singh, both sons Arshdeep Singh, Jashandeep Singh, Tejinder Singh, Mohit Kakkar. All the said persons were holding Kirpans, Kapas and Baseballs and I raised noise "Don't kill Don't kill" and after having heard my noise, finding the gathering being attracted to that place, all the accused fled away from the spot along with their weapons. Due to internal injuries, my son Tejinder Singh had fallen there and with the help of the residents of the Colony, he was brought to GGSMC & Hospital where Doctor Sahib declared my son "Brought dead" and the death of my son has been caused due to beatings given by Bony and other persons who accompanied him. The reason of the dispute is that Bony etc. used to stop sons of Lakhwinder Singh from sitting on the bench lying in front of my house. It is therefore requested that legal action may be taken against Bony and his 8/10 unknown associates. I have got recorded my statement to you which I have read, heard and the same is correct. Sd/ Baldev Singh aforesaid, attested Sd/- Guljinderpal Singh, Station House Officer, Police Station City Faridkot dated 07-10-2023. Police proceeding: Today undersigned INSP/SHO along with SI Sukhwinder Singh No. 326/PAP, ASI Gurdit Singh No. 481/Faridkot, ASI Akalpreet Singh 915/Faridkot, ASI Savinder Singh No. 583/Faridkot, Constable Jaswinder Singh No. 82/Faridkot, PHG Baldhar Singh 32424 while boarded in the Bolero vehicle No. PB-65-BA- 7387 whose driver was Hawaldar Parampal Singh 307/Faridkot, who were on patrolling for checking of suspected persons, reached in GGSMC & Hospital Faridkot from where it was learnt that in the Dream City Colony a quarrel has taken place in which one boy has died away and other persons had received injuries and I, Inspector/SHO along with my other associates reached in Emergency GGSMC Hospital where Doctor Sahib handed over Ruka doctory No. 3206 dated 06-10-2023 regarding death of Tejinder Singh son of Baldev Singh, resident of Dream City and father of Tejinder Singh has also met who got recorded his statement with me and his statement was written and read over and explained to him who after hearing and admitting the same to be correct, signed below his statement, to which I attested. From the aforesaid statement and Ruka Doctory, an offence Under Section 302/34/148/149 IPC I.P.C. is made out. The statement is being sent to the Police Station through ASI Savinder Singh No. 583/Faridkot for registration of case. After registration of case, its number may be informed. Special reports may be issued. I, INSP/SHO along with other police officials is busy in the investigation. Sd/- Guljinderpal Singh, Station House Officer, Police Station City Faridkot dated 07-10-2023. Today Emergency GGSMC Hospital Faridkot AT: 01.20 AM. Today in Police Station: aforesaid statement After receiving the in Police Station, aforesaid case under aforesaid offences against aforesaid accused and unknown persons was registered and the case F.I.R. is being sent through ASI to the INSP on the spot. After preparing Special reports, the same are sent to Duty Magistrate Sahib and Senior Officers through ASI Nirmal Singh 264/Faridkot. PCR/FDK is being informed separately through W/M. Closed Rapat Number 03 dated 07-10-2023 Time: 01.50 A.M."

6. The autopsy of Tejinder Singh was conducted. Thereupon, all three other injuries were also subjected to the medico-legal examination. Thereafter, the supplementary statement of Baldev Singh, was recorded, and one of the

petitioners, i.e. Tarsem Singh, who is the father of main accused-Sandeep Singh alias Mony was nominated as accused vide DDR No.30, dated 07.10.2023. The statement of Lakhwinder Singh-injured/eyewitness was also recorded, who also pointed out his finger towards Tarsem Singh. Vide DDR No.40, offences under Sections 307, 452 and 323 IPC were also added on 07.10.2023. Further, during investigation, on the basis of statement of Sandeep Singh alias Mony, a cross-case has been registered, and five persons were nominated as accused therein, the said cross-case, after investigation was cancelled by the prosecution agency, and the cancellation report was prepared on 17.10.2023.

7. Present petitioner-Tarsem Singh and Amandeep Singh alias Goldy were arrested on 10.10.2023 and 09.10.2023 respectively.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

8. The learned counsel for the petitioners, in his asking for the hereinabove extracted relief, submits that the petitioners have not been named in the FIR (*supra*), and no specific role has been attributed to them at the first instant. He further submits that their names have been cropped up during the investigation, and even the supplementary statement of the complainant was recorded, which *prima facie* casts doubt upon the story of the prosecution, and it seems to be a case of concoctions.

9. He also submits that there is no connection between the injury suffered by the deceased-Tejinder Singh, and the cause of his death.

10. He further draws attention of this Court towards the reply, dated 21.05.2024, filed by the prosecution agency to the instant petitions, wherein, it has mentioned that the cause of death of deceased-Tejinder Singh, is brain hemorrhage, and there is no evidence of any injury marks on the head of the

deceased-Tejinder Singh. The relevant extract of the reply reads as under:-

“9. That in a subsequent medical opinion with regard to a specific query regarding final opinion as to cause of death of deceased Tejinder Singh, the concerned Surgeon mentioned that it is not possible to give opinion whether Brain Hemorrhage was due to some disease or Trauma to the head, as per postmortem record, there was no evidence of any external injury mark on the head of the person of Tejinder Singh. which indicated that possibility of the death of Tejinder Singh due to sudden hemorrhage with fear cannot be ruled out, accordingly the offence u/s 302/307 IPC were not attracting to the facts of the case and investigation under section 302/307 IPC was dropped and enhancement of offence u/s 304 IPC made vide DDR No. 25 dated 04-01-2024. The investigation completed against present petitioner and co-accused was completed and challan was submitted in the concerned court on Date 05-01-2024.”

11. He in addition submits that as per the post-mortem report, there is only one abrasion on the right elbow of the deceased, which cannot in any manner has any nexus with the cause of death of Tejinder Singh.

12. Finally, he submits that the petitioners have suffered incarceration of about 01 year, as on today, and the trial is at initial stage, as no prosecution witness has been examined so far.

SUBMISSIONS OF THE LEARNED STATE COUNSEL AND COUNSEL FOR THE COMPLAINANT

13. *Per contra*, the learned State counsel assisted by learned counsel for the complainant, have vociferously opposed the grant of regular bail to the petitioners, and submit that the petitioners were duly identified during Test Identification Parade, which was conducted before the magistrate concerned, therefore, it has the evidentiary value equal to that of recording of statement under Section 164 Cr.P.C.

14. They further submit that the injured/eyewitness has categorically deposed regarding the role of the present petitioners, in as much as, they caused injuries to the deceased-Tejinder Singh. Therefore, the petitioners being a member of the unlawful assembly, do not deserve the relief of regular bail.

15. Learned State counsel has filed a custody certificate *qua* the present

petitioner-Amandeep Singh alias Goldy, which reflects that he has suffered incarceration of about 10 months and 23 days, as on today. Whereas, undisputedly the petitioner-Tarsem Singh, was arrested on dated 10.10.2023, and since then he is behind bars.

16. Learned State counsel on instructions, imparted to him by the police official concerned, submits that after framing of the charges on dated 31.08.2024, against the present petitioners, none of the prosecution witness has been examined so far.

ANALYSIS

17. 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.

18. *“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.

19. 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.

20. 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."

21. 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 of 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.”

22. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and rival submissions made all the parties concerned, and is of the considered opinion that the instant petition is amenable for being allowed and the present petitioners deserve to be released on regular bail.

23. The reason for forming the above inference emanates from the factum that:- (i) it is not under dispute that the cause of death of deceased-Tejinder Singh, in the instant case is of brain hemorrhage, and there is no evidence of any external injury mark on the head of the person of said deceased, and because of this reason, the prosecution has already proceeded to delete Section 302 IPC, and now the petitioners are facing trial under Section 304 IPC; (ii) whether, the injury which is caused by all the accused persons resulted in death of Tejinder Singh, is moot question, which is required to be adjudicated by the learned trial court concerned, at an appropriate stage of the trial; (iii) the petitioner-Amandeep Singh has suffered incarceration of 10 months and 23 days, as on today, and it not under dispute that the petitioner-Tarsem Singh was arrested on 10.10.2023, and he is behind bars since then; (iv) the charges were framed against the petitioners on 31.08.2024, however, none of the prosecution witness has been examined till date by the prosecution, therefore, conclusion of the trial would take a long time.

FINAL ORDER

24. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioners.

Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioners are 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.

25. However, it is clarified that if in future, the petitioners are 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.

26. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petitions.

27. All pending application(s) stand **disposed** of accordingly.

28. A photocopy of this order be placed on the file of the connected case.

September 05, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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