



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M -14779-2024

Date of Decision : **July 25, 2024**

SURENDER ALIAS SONU ALIAS VIHAN

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Kamal Narula, Advocate for the petitioner.
Mr. Bhupinder Singh, D.A.G., Haryana.
Mr.S.S.Gill, Advocate for the complainant.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioner prays for grant of regular bail in case FIR No.380 dated 2.9.2023, under Sections 148/149/323/341/506 IPC (offence under Sections 307/325 IPC added later on), registered at Police Station Ellenabad, District Sirsa.
2. The prosecution agency was set into motion on a statement made by Sanjay Kumar. The relevant extract of the same reads as under:-

“Stated that I am a resident of the above address and I run a shop in the name of Sanjay Mehta Music Center on Sirsa Road, Ellenabad and my elder brother Dharambir alias Vicky also run a shop near Rest House in the name of Mehta Music and my uncle's son Vikas Kumar alias Monu son of Basant Lal, resident of Talwada Khurd also works at my shop and he comes to village Talwada Khurd daily on his motorcycle. My brother Dharambir alias Vicky has been ill for a long time and is admitted in Sirsa Dera Sacha Sauda Hospital. On 29.08.2023, we needed some music items during the day, hence I got the key of his shop from my brother's house and gave the key to the shop to Vikas Kumar alias Monu and asked to get some music items, then around 7.30/8.00 in the evening, I and Vikas Kumar alias Monu, on our respective motorcycles, went to Dharambir's house in street of Sain Mandir Wali Ward no. 17, in order to return the keys of my brother Dharambir alias Vicky's shop, Vikas Kumar alias Monu was going ahead of me on his motorcycle



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and when we reached some distance ahead of Shri Ram School, about 7 boys came riding on three motorcycles with gundasi and axes, kapa in their hands. Among those young boys, I had recognized one boy whose name is Sonu, son of Mangat Ram, resident of Talwara Khurd, who had an axe in his hand, perhaps Vikas Kumar alias Monu would know about the other boys; I do not know their names. As soon as they came, they stopped the motorcycle of Vikas Kumar alias Monu by putting their motorcycle in front of it and suddenly everyone attacked Vikas Kumar alias Monu with sharp weapons in their hands and all the attackers were saying that kill him. I got scared of this attack and ran away from there on my motorcycle. Then I, informed my Uncle Nanak chand son of Satnaram resident of Talwara Khurd now at ward no. 7 Ellenabad. When my uncle arrived, I reached the spot with my uncle Nanak Chand and came to know that the people of the locality had rescued Vikas Kumar alias Monu from them, called an ambulance and sent him to the Government Hospital Ellenabad. I along with my uncle Nanak Chand reached the Government Hospital Ellenabad and then my uncle Rajendra and Manohar son of Satnaram resident of Talwara Khurd also came there. My cousin Vikas Kumar alias Monu was badly injured by the sharp weapons. The doctor had given first aid treatment to Vikas Kumar @ Monu and then referred him to Government Hospital, Sirsa. We got admitted Vikas Kumar alias Monu to the Government Hospital, Sirsa, on which doctor referred Vikas Kumar alias Monu to the higher institution, but due to serious injuries of my brother we got admitted my brother Vikas Kumar alias Monu to City Healthcare Center, Sirsa. Wherein, my brother Vikas Kumar alias Monu is undergoing treatment. Who is not in a condition to give statement. Due to the festival of Rakhi, I had gone to Panipat to my sister and today only I have come and met you at the bus stand Ellenabad and told you the entire truth. Strict legal action should be taken against Sonu, son of Mangatram, resident of Talwara Khurd and 6 other unknown boys who came with him and without any reason they injured Vikas Kumar alias Monu with sharp weapons.”



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3. A perusal of the record, it clearly reflects that the petitioner has caused injury on the head of the victim-Vikas, which was subsequently declared “dangerous to life.”

4. Learned counsel for the petitioner in his asking for the relief(supra) submits that the petitioner has suffered incarceration of about 10 months. He further submits that out of total 7 accused arraigned by the prosecution, 5 accused have already been granted the relief of regular bail. He further places reliance upon the orders dated 12.3.2024 and 15.3.2024 (Annexures P-3 and P-4) respectively, whereby, two of the petitioner’s co-accused have been granted the relief of regular bail by this Court.

5. On the other hand, the learned State counsel, who is assisted by the learned counsel for the complainant opposes the grant of regular bail to the petitioner and submits that the petitioner is the main accused, who has caused injury to the injured/victim, which was subsequently declared “dangerous” in nature. They further submit that the petitioner is involved in 2 more criminal cases, therefore, he is not entitled to be released on regular bail.

6. The learned State counsel on instructions imparted to him by ASI Prem Kumar also informs this Court that after completion of investigation, the final report was filed before the learned Illaqa Magistrate concerned and thereupon the charges have been framed on 30.1.2024. He further informs this Court that out of total 21 witnesses cited in the final report, no witness has been examined so far.

ANALYSIS

7. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any



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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 bi-focal 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.

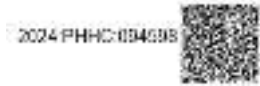
12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. 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.”

12. On the anvil of the above, this Court is of the opinion that since the petitioner has suffered incarceration of about 10 months and the trial is yet to commence as despite framing of charges on 30.1.2024 no prosecution witness has been examined so far, therefore, subjecting the petitioner to prolonged incarceration would not serve any fruitful purpose. With regard to the involvement of the petitioner in two more cases, it is informed by the learned counsel for the petitioner that in both the cases, the petitioner is already on bail.



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13. In view of the facts and circumstances recorded above, this Court deems it fit and appropriate to extend the benefit of regular bail to the petitioner. Therefore, the present petition is **allowed**.

14. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

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

July 25, 2024
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(KULDEEP TIWARI)
JUDGE

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