

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRM-M-14685-2024
Date of decision: 16.05.2024

PARVEEN KUMAR @ PARVEEN @ PEENUPetitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. M.S. Rana, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

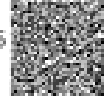
KULDEEP TIWARI. J.(Oral)

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioner prays for grant of regular bail in case FIR No.136, dated 17.11.2022, under Sections 302, 323 and 34 of the IPC, registered at Police Station Khuian Sarwar, District Fazilka.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set into motion on a statement made by one Surjit Singh, the relevant extract of the FIR reads as under:-

"Statement of Surjeet Singh son of Pritam Singh resident of village Dalmeer Khera Police Station Khulan Sarwar aged about 32 Years Mobile No.9465505298 stating that I am resident of abovesaid address and is working as Driver on AVS Transport Company, while Bhim Sain son of Om Parkash son of Purkha Ram resident of village Waryam Khera is working as Conductor in the same company. Both of them used to travel on a motorcycle together to attend their duties. We used to park their motorcycle at village Shergarh in the morning and further used to travel together on my motorcycle to go to their villages in the evening. He further stated that on 16.11.2022 in the evening, while riding Splendor motor cycle bearing registration

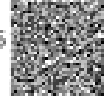


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No. PB46-E-2432, we were going from village Shergarh to link road Waryam Khera. Motor cycle was being driven by Bhim Sain and I was the pillion rider. At about 8.00 pm, when we reached about one kilometer behind from village Waryam Khera, four persons with muffled face one of them carrying iron rod, Two people were baseball and fourth one was carrying hockey were standing on the way. All the assailants stopped them with the help of torch. One another assailant was standing near a motor cycle. When Bhim Sain stopped his motor cycle, one unknown person, who was carrying iron rod, asked his name in Bagari Language who are you then, Bhim Sain disclosed his identity, whereupon, all the four assailants, with an intention to kill, attacked Bhim Sain with their respective weapons. When I came forward to save Bhim Sain, then a person carrying baseball caused injuries to me with baseball bat hitting me on right eye and right cheek. When Bhim Sain raised his hand to save from the blow, unidentified persons gave injuries on both his hands. Bhim Sain fell on the ground and all the assailants caused him more injuries and murdered him. Thereafter, all the four unidentified persons ran away from the spot alongwith their respective weapons by riding their motorcycles towards Waryam Khera. Then I raise hue and cry then on being informed, my brother Gurmukh Singh and family members of deceased Bhim Sain came at the spot. I disclosed the whole incident to them. Then my brother Gurmukh Singh got admitted to Civil Hospital, Abohar for further treatment. I can identify the four assailants in they are brought in front of me who murdered Bhim Sain and also injured me. Action be taken against abovesaid four persons."

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:-
4. Learned counsel for the petitioner submit that the only star witness i.e. the complainant/injured, who stepped into the witness box as PW-3, did not support the case of the prosecution, and has turned hostile.
5. Learned counsel for the petitioner further submit that there is no other evidence with the prosecution which can connect the present petitioner with the alleged crime.
6. Learned counsel for the petitioner also submit that the petitioner has



- 3-

already suffered incarceration of approximately 01 and a half year, and out of the total 26 prosecution witnesses, 09 have been examined so far, therefore, 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, and has placed on record the reply dated 16.05.2024, by way of affidavit of Mr. Arun Mundan, PPS, Deputy Superintendent of Police Sub Division Abohar, District Fazilka, and also the custody certificate *qua* the petitioner, which are taken on record.

8. Learned State counsel, on instructions imparted to him from the official respondent, informs this Court that out of the total 26 prosecution witnesses cited by the prosecution in the final report, 09 witnesses have already been examined.

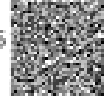
9. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 1 year, 05 months and 14 days as on today.

ANALYSIS

10. This Court has heard the learned counsel for both the parties concerned, and has gone through the entire case file, and also the reply filed by the State.

11. This Court has examined the reply (*supra*), and as per the reply, two persons suffered injuries, i.e. one Surjeet Singh (complainant) and another Bhim Sain. Whereas, Bhim Sain scummed to his injuries. In the reply (*supra*), the cause of death as reported by the Board of Doctors reads as under:-

“In the opinion of the Board, cause of death is injury to vital organs



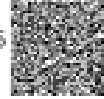
like brain and excessive blood due to multiple injuries which is sufficient to cause death in ordinary course of nature.”

12. The motive which was assigned for committing the alleged crime, was that the accused Parveen was residing in the neighbourhood of deceased Bhim Sain, and one Bolu (uncle of the accused Parveen), who was also residing in the same street. Two months back of the occurrence, said Bolu struck his tractor-trolley against the wall of the house of deceased-Bhim Sain, due to which there was an altercation between accused Bolu and Parveen, and the deceased Bhim Sain. Furthermore, there was another instance of altercation between accused Parveen and deceased Bhim Sain on playing DJ on high volume.

13. Therefore, the accused Parveen and Bolu were nursing grudges against the deceased Bhim Sain. All the accused including the present petitioner in connivance with each other killed Bhim Sain, by causing injuries to him.

14. *“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.

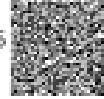
15. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is



“the presumption of innocence”, besides the gravity of offence(s) involved.

16. 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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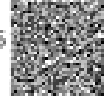
29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling 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."

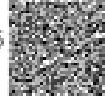
17. Also, in ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh"***, 1978 AIR (Supreme Court) 429, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :



“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

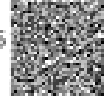


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the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

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.”

18. 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.

FINAL ORDER

19. Though, there are specific allegations against the present petitioner, that he has caused injuries to the deceased-Bhim Sain, however, considering the fact that the main star eye-witness of the prosecution, who is the complainant/injured, has turned hostile, and the petitioner has suffered incarceration of 1 year, 5 months and 14 days, as on today, and trial will take some time to conclude, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner, during the pendency of 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 his bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

20. 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. 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.

16.05.2024

amandeep

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned.

Whether Reportable.

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Yes/No

Yes/No