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

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Date of Decision : July 02, 2024

YOUSF @ KALIA @ YUSUF

-PETITIONER

V/S

STATE OF PUNJAB

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Gurbir Singh Sidhu, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, the petitioner craves for indulgence of this Court for him being enlarged on regular bail, in case FIR No.51 dated 10.04.2023, under Sections 307, 323, 34 of the IPC, registered at P.S. City-1 Malerkotla, District Malerkotla.

ALLEGATIONS IN THE FIR

2. Succinctly stated, the allegations levelled in the present FIR are that, the petitioner along with his co-accused, in furtherance of their common intention, caused injuries on the person of one Usman son of Mohd. Aslam (hereinafter referred to as the 'complainant'). The relevant extract of complainant's statement, which constituted bedrock for registration of the present FIR, and, which is narrated in paragraph No.3 of the order dated 01.03.2024, whereby petitioner's bail application has been dismissed by the learned Additional Sessions Judge, Sangrur, is reproduced hereinafter:-

"...On 08.04.2023 at about 10.30 p.m. complainant Usman along with his



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friend Usman, Jugnu, Azam were talking with each other near the tea shop of Sonu after playing cricket. In the meantime, Sharik along with Usman Rana @ Lalla armed with iron dah came on motorcycle, which was being driven by Sharik and Usman Rana @ Lalla was pillion rider. While Shamshad @ Kaka and Yusaf @ Kalia also came on another motorcycle. Shamshad @ Kaka was driving that motorcycle. While Yusaf @ Kalia was pillion rider and was armed with Kirpan. They stopped their motorcycle near complainant and his companions. Sharik and Shamshad @ Kaka exhorted that they would kill Usman on that day. On that Yusaf @ Kalia gave blow with kirpan towards complainant with an intention to kill him. Complainant Usman stepped towards back side and rescued himself. Then Usman Rana @ Lalla gave blow with his iron dah towards complainant with an intention to kill him and that blow struck on the left jaw of complainant. Complainant Usman fell down. His companions raised alarm "Marta-Marta". Thereafter, assailants fled away on their motorcycles along with their weapons..."

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) No injury has been attributed to the petitioner in the FIR;
- (ii) The complainant has suffered only one injury, i.e. "Lacerated wound measuring 10 x 5 cm present on left jaw, advice surgical opinion", which is attributed to petitioner's co-accused Usman Rana, who has already been granted the relief of regular bail by the learned trial Court;
- (iii) Total five persons, including petitioner, were arrayed as accused in the present FIR, out of which, (i) one accused was declared innocent; (ii) one accused was discharged by the learned trial Court; (iii) two accused have already been granted the relief of regular bail by the learned trial Court; and (iv) petitioner is the only accused, who has been languishing behind the bars;
- (iv) The petitioner has suffered incarceration of approx. 7½



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months;

(v) Trial is not likely to conclude anytime soon, as despite the charges becoming framed on 19.04.2024 and supplementary charges becoming framed on 03.06.2024, none out of the total 19 prosecution witnesses has yet been examined, and therefore, keeping the petitioner behinds the bars would serve no gainful purpose;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. *Per contra*, the learned State counsel has opposed the grant of regular bail to the petitioner, on the ground that, in fact, it is the petitioner's act which attracts the penal provisions of Section 307 of the IPC, inasmuch as, it was he, who had with an intent to commit murder, gave a kirpan blow to the complainant, however, the latter warded off the attack by stepping back. He has also placed on record the custody certificate of the petitioner, as issued by the Superintendent, Sub Jail, Malerkotla, and submitted that the petitioner is involved in three more cases.

5. Moreover, on instructions imparted to him by A.S.I. Anayat Khan, the learned State counsel has verified that, none out of the total 19 prosecution witnesses has yet been examined.

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 pre-



ceding 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 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 per-



spective 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 heard the submissions made by the learned counsels for the parties and perused the record. This Court is of the view that the present petition deserves to be allowed. The reason for forming this inference generates from the factum that:- (i) the petitioner has not caused any injury to the complainant, rather the only injury suffered by the complainant has been caused by petitioner's co-accused Usman Rana, who has already been enlarged on bail by the learned trial Court; (ii) as per custody certificate, the petitioner has suffered incarceration of approx. 07½ months; (iv) trial is at its initial stage and is not likely to conclude anytime soon, as out of total 19 prosecution witnesses, none has yet been examined, therefore, subjecting the petitioner to prolonged incarceration would serve no fruitful purpose; (v) although the petitioner is involved in three more cases, however, considering the role assigned to the petitioner in the present FIR, besides considering the nature of those three cases, this Court does not deem it appropriate to keep the petitioner behind bars for indefinite period. 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.



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12. 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 02, 2024
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(KULDEEP TIWARI)
JUDGE

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