

CRM-M-15268-2024 &
CRM-M-15278-2024

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2024:PHHC:046352

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-15268-2024

Date of Decision :April 05, 2024

BALWINDER SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CRM-M-15278-2024

GAGANDEEP SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr.Karanbir Singh, Advocate
for the petitioners.

Mr.Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI. J.(Oral)

1. Both the petitions arise out of the same FIR, therefore, being amenable for common decision, same are taken up together.

2. Through the instant petition, the petitioners crave for indulgence of this Court for their being enlarged on regular bail, in case FIR No.97, dated 04.06.2021, under Sections 306, 506 and 34 of the IPC, registered at Police Station Talwandi Sabo, District Bathinda.

ALLEGATIONS AGAINST THE PETITIONERS

3. The prosecution agency was set into motion on the statement of one Bhupinder Singh, on the basis of his statement the instant FIR has been registered. The gist of the FIR as culled by by the learned

Additional Sessions Judge concerned, while declining the regular bail, vide order dated 02.03.2024, reads as under:-

“4. Perusal of the record indicates that the FIR has been registered on the statement suffered by Bhupinder Singh, interalia, alleging that he is an agriculturist. His father Gurcharan Singh are three brothers. Gurcharan Singh is eldest and younger to him is Arjan Singh and youngest is Balwant Singh. Balwant Singh was residing with his in-laws at Village Nasibpura. He had one son namely Ram Bahal Singh and a daughter namely Jaspreet Kaur. His aunt (Chachi) Chinderpal Kaur had died on 26.04.2021 during Corona Pandemic. Ram Bahal Singh visited him at his village in connection with some work. At about 12.30 PM, he received a cell phone call from Jaspreet Kaur informing that Balwant Singh had consumed poison and asked him to rush home. They arranged vehicle and reached there. His uncle Arjan Singh was first to reach Village Nasibpura where he found Balwant Singh in unconscious condition. He lifted him and carried him to Sidhu Hospital, Bathinda for treatment. At about 1.30 PM, he along with Ram Bahal Singh reached the hospital. His uncle Arjan Singh went back to the village. Balwant Singh died during treatment at about 7.30 PM. They found a suicide note in the pocket of the clothes of Balwant Singh stating that he was being harassed by his sister-in-law (Sali) Rajwinder Kaur and brother-in-law (Sadhu) Balwinder Singh and Gagandeep Singh in connection with partition of land and used to threaten him and he was committed suicide on account of being harassed by them and they would be responsible for his death. His last rites be performed at Village Bangi.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

4. Learned counsel for the petitioners submits that no case whatsoever, under Section 306 IPC, is made out, if even the allegations (*supra*) are treated as a gospel truth, as the ingredients of Section 107 IPC is totally absent.

5. He further submits that one of the co-accused i.e. Rajwinder Kaur, *qua* whom there are similar allegations, has been extended the benefit of pre-arrest bail by this Court vide order dated 14.03.2024.

6. He further submits that the matter has been amicably settled with the complainant-Bhupinder Singh, and the petitioners have also

preferred a petition, for quashing of the instant FIR, on the basis of compromise, vide bearing No.CRM-M-10869-2022, which is pending adjudication before a co-ordinate Bench of this Court, wherein, the parties have been directed to appear before the learned *Illaqa* Magistrate/trial Court concerned, for recording their respective statements *qua* compromise.

7. He further submits that the petitioners were arrested way back on 07.02.2024, and since then they are behind bars, and they are not involved in any other criminal case.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. *Per contra*, the learned State counsel opposes the asked for relief of grant of regular bail, on the ground that, there is an offence punishable under Section 306 IPC, in the FIR (*supra*), therefore, benefit of regular bail cannot be extended to the petitioners.

9. He further submits, on instructions imparted to him by ASI Jasvir Singh, that investigation in the instant FIR, has already been completed, and the final report has already been filed, and during the investigation, a suicide note has been recovered from the pocket of the deceased, however, a report from the handwriting expert has not been received so far. Further, both the petitioners are not involved in any other criminal case.

ANALYSIS

10. “*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.

11. 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.

12. 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.”

13. 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.

14. 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

15. Considering the above fact that though this Court is not taking cognizance of compromise, however, *prima facie* this Court is of the view that there is a merit in the contention of learned counsel for the petitioners, that the ingredients of Section 107 IPC, are absent, and further the veracity of the alleged suicide note is yet to be established as the report of handwriting expert is still awaited, and the petitioners are behind bars since 07.02.2024, and the trial is yet to commence, coupled with the fact that since the main star witness, i.e. the complainant, has compromised the matter with the petitioners, there are less chance that the complainant is going to support the case of the prosecution, 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.

16. 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.

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

April 05, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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