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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-16025-2024

Date of decision : May 15, 2024

Daljit Singh @ Harjit Singh @ Jita

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Gursimran S. Bawa, 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.35 dated 9.4.2023, under Sections 302,506,148,149 IPC, (vide Rapat No. 28 dated 18.5.2023 offences falling under Sections 302, 506, 148 IPC, were deleted and offences falling under Section 304 IPC were added) registered at Police Station Kathu Nangal, District Amritsar.

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR was registered on the complaint made by Jatinder Kumar. The gist of the statement of Jatinder Kumar, which became the basis of the FIR, reads as under:-

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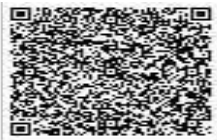
"Statement of Jatinder Kumar son of Rattan Lal, resident of Chawinda Devi, Police Station Kathu Nangal, aged about 46 years, M.9814273923. Stated that I am resident of abovesaid address and I tailor by am profession. My neighbourer Fateh Singh son of Gian Singh resident of Chawinda Devi wants to open a gate in front of my house in the street forcibly. Today on 09.04.2023 around 5:30 in the evening, I was stitching clothes in my house and I heard a noise in the street and when I came out I saw Fateh Singh son of Gian Singh, Amandeep Kaur wife of Fateh Singh, Harjit Singh @ Jita son of Gian Singh, Paramjit Singh son of Kishan Singh, Pritam Singh son of Jagir Singh, Dilbagh Singh son of Gian Singh, Heera son of Jaspal Singh residents of Chawinda Devi, Sanjeev Bhaskar son of Ramesh Chander, resident of Batala Road, Gali Banke Bihari Wali, Amritsar and Vikram Gill resident of bypass Amritsar along with 6-7 unidentified persons, whose names I don't know were confronting my father Rattan Lal son of Bhag Mal, resident of Chawinda Devi and suddenly, they started Scuffling with my father, due to which my father fell down on the ground. I and my wife Sharanjit Kaur tried to rescue my father from the above-mentioned persons, but all of them were continuously giving kick blows to my father and abusing him while he was lying down on the ground. We raised hue and cry, upon which Vikramjit Singh @ Vicky son of Salwinder Singh, resident of Chawinda Devi and other persons came on the spot and upon seeing them, all of the abovementioned persons ran away from the spot on their car bearing registration No. PB-02- CL-

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9152 while extending death threats to us. After arranging a vehicle, I have taken my father to Ranjit Hospital Kathu Nangal, where the Doctor declared him as brought dead. I have come back to my house alongwith the dead body of my father. The reason behind the grudge is that Fateh Singh son of Gian Singh wants to open a gate in front of my house in the street forcibly and we used to stop him, due to which Fateh Singh had called the abovementioned persons and had killed my father. I have kept the dead body of my father in my house with my relatives and I along with Jaspal Singh son of Ram Nath, resident of Chawinda Devi were coming to inform you, but you have met us. I have recorded my statement, read it and the same is correct. I am the complainant. Legal action should be taken against the abovementioned persons.”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

2. Learned counsel for the petitioner submits that though the instant FIR was registered under Sections 302,506,148,149 IPC. but during the course of investigation, Sections 302, 506, 148 IPC. were deleted, and offence under Section 304 IPC. was added on dated 18.5.2023. He further submits that no specific injury is attributed to the present petitioner. He further submits that, rather it is a disputed question of facts, whether, the deceased Rattan Lal died because of the injuries suffered in a scuffle, or he died because of some other medical issues. This is a disputed question of fact, which has to be adjudicated by the learned trial court concerned, after adduction of the evidence. He also submits that no specific injury is



attributed to the present petitioner, and in fact, the cause of death, as opined by the doctor is neurogenic shock, as a result of injuries. He in addition submits that a total of 9 persons had been arrayed as an accused, however, after investigation, 5 persons have been found innocent, and only 4 persons have been put to trial by the prosecution agency, and out of the 4, 3 persons have already been extended the benefit of regular bail by this Court.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

3. The learned State counsel on the other hand opposed the grant of regular bail, and filed a status report by way of affidavit of Deputy Superintendent of Police, Sub Division Majitha, District Amritsar, and custody certificate of the petitioner is also filed in the Court today. Both are taken on record.
4. As per the status report (*supra*), the deceased Rattan Lal suffered the following injuries:-

Examination of external injuries.		
Sr. No.	Remark	Injury Number
1	Abrasion 0.5x0.5 cm on left ala of nose	1
2	3 x 0.25 cm abrasion on left maxilla about 1.5 cm below left eyelid. On dissection, underlying tissues and bones are found intact.	2
Opinion:- Cause of death- The cause of death in this case will be given after receiving reports for chemical examiner and histopathological.		
Ante-mortem/Postmortem: NA		
Nature of Weapon/Force: NA		
How the injury would be caused: NA		

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Probable time:-

a. between injury and death: NA

*b. between death and post mortem examination:
within 24 hours.*

5. Further the final opinion is also mentioned in the status report, which reads as under:-

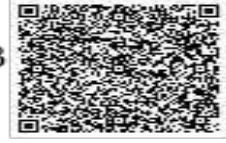
“After going through the gross findings of PMR, Chemical Examiner Report vide No.1863 dated 07.06.2023 and Histopathology report No.1332 23 dated 27.05.2023, no definite cause of death can be attributed in this case. However, possibility of neurogenic shock as a result of injuries likely to cause death cannot be ruled out.”

6. So far as role of the present petitioner is concerned, which is mentioned in the reply (supra) is that he gave kick and fist blows to the deceased Rattan Lal on the date of occurrence.

ANALYSIS

7. 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.

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

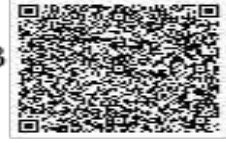
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underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

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. This Court considered the submissions made by the learned counsel for the petitioner, as well as learned State counsel, and the status report filed by the prosecution. This Court is of the view that the instant petition deserves to be **allowed**, as the role attributed to the present petitioner is of similar nature to the other co-accused, who have been extended the benefit of regular bail. Further the petitioner has suffered incarceration of 11 months and 20 days as on today, though he is also stated to be involved in one other case, but in that case he has already undergone the sentence as imposed upon him. Further the learned State counsel on instructions imparted to him by official concerned, submits that charges have been framed in the instant matter on 9.5.2024, however, out of total 20 witnesses cited by the prosecution in the final report, none has been examined till date. Considering the fact that the trial would take a long time to conclude, and the petitioner has suffered sufficient

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incarceration, this Court deems it fit and appropriate to extend the benefit of regular bail to the petitioner. Therefore, the present petition is **allowed**.

13. 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.

14. 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.

May 15, 2024

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**(KULDEEP TIWARI)
JUDGE**

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No