

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

225

CRM-M-16164-2024
Date of decision: 09.04.2024

JASPAL SINGH @ FAUJI

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Prince Sharma, Advocate
for the petitioner.

Mr. Raghav Garg, AAG, Punjab.

Mr. Lokesh Vohra, Advocate
for the complainant.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.218 dated 04.12.2023, under Sections 307, 323, 148 and 149 of IPC, and under Sections 25 and 27 of the Arms Act, 1959, registered at Police Station Sadar Ferozepur, Tehsil & District Ferozepur, Punjab.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution story as unfold from the reading of the instant FIR, which reads as under:-

"Statement of Gurjant Singh son of Amar Singh son of Tan Singh resident of Attari, Police Station Arif Ke, District Ferozepur age 35, mobile no. 94654-18065 that I am resident of the above mentioned address and priest at Gurudwara. Yesterday around 7 o'clock, I along with my uncle's (Taya) son Dharminder Singh son of Sucha Singh and

my father Amar Singh were coming to Ferozepur City for our household work on their motorbikes. I was riding my motorcycle bearing registration number PB-05-AG-4125 and my father and cousin were coming behind me. It was around 7:30 PM, when I arrived near of Nawa Sodde Wala, then a car number bearing registration no. PB02 BL 8884 Swift car came in high speed from the front side, which hit with my motorcycle and I fell on the road. My cousin Dharminder Singh and father also reached who said to the car driver that you hit the boy, why did you not drive carefully, car driver was along with another person and two other women and they were arguing with my father & also abusing and they came, then one person came from the front shop, he hit air pump on shoulder of my father Amar Singh and they quarreled, then woman came out of the car and raised voice that why did you keep gun, they are quarreling with us, then car driver shot fire with his gun with the intention to kill which hit in the stomach of my cousin Dharminder Singh, then my father and I screamed "maar dita maar dita", the accused left the said car and ran away. Later on, my father arranged a ride and he admitting my cousin Dharminder Singh and me at Civil Hospital Ferozepur. We personally searched for the driver of the car who shot bullet and found their name is Jaspal Singh Fauji son of Hira Singh resident of Jawahar Nagar, Mehta Road, Sri Amritsar, Harpal Singh son of Ratan Singh resident of Round Khera, Police Station Qila Lal Singh District Gurdaspur and shopkeeper namely Harpal Sharma son of Prem Lal resident of New Sodde Wala, police station Sadar Ferozepur. Jaspal Singh Fauji and two unknown women have injured me by hitting car and shot bullet at my cousin Dharminder Singh with the intention of killing him. So, take legal action against them and provide justice. The statement has been written and heard over. My cousin Dharminder Singh has been referred to DMC Ludhiana due to severe health. I have been discharged. I was coming to you to write a statement, the statement has been written and heard which is correct, Sd/- Gurjant Singh, Gurjant Singh son of Amar Singh, verified by ASI Gurnam Singh, Police Station Sadar Ferozepur dated 04.12.2023. Police Action: Today 1 ASI was present at the police

station, then the MHC of police station produced an MLR No. 315/AA/MLR/CHF/2023 of Gurjant Singh son of Amar Singh resident of Attari in which total four injuries were sustained. All the injuries are blunt and injury no. 1 has been placed under X-Ray and in Memo (Ruka) No. 2065 dated 03-12-2023 of Dharminder Singh son of Sucha Singh resident of Attari which wrote that he is injured by bullet of weapon. I ASI was going along with HC Ramesh Kumar 1263, CT Manveer Singh 659/FZR, PHG Davinder Kumar 6061, PHG Jarnail Singh 5828 and were going to Civil Hospital Ferozepur on private vehicle for recording statement, when I ASI reached at the gate of Civil Hospital Ferozepur, then Gurjant Singh met and he recorded his statement before me which was read over to him, after admitted the same to be correct, he signed in English Language below his statement which it verified and as per statement found offence under section 307/323/148/149 IPC & 25/27/54/59 Arms Act. The statement is sending at police station by handed of Davinder Kumar for registration of the F.I.R., after the registration of F.I.R. no. may be intimated. The special report be sent to the higher officials and informed to PCR. I am going along with my fellow employees and the complainant Gurjant Singh at the spot of occurrence, SD/ Gurnam Singh ASI, PS Sadar Ferozepur dated 04.12.2023. Today at the jurisdiction of Civil Hospital, Ferozepur at 07.05 PM. Today at Police Station: At this time the statement received and registered F.I.R. against above said accused and a copy of F.I.R. along with statement is sending by handed of PHG before the ASI for further investigation. Special reports are sending to senior officials & Ilqa Magistrate by handed of L/CT Jaswinder Kaur No. 614/FZR. The information is providing to PCR via wireless."

The perusal of the FIR (supra) reveals that it is a case, where a quarrel had taken place between the accused person, and the complainant, as the car of the accused person has hit the motorcycle of one of the victim. Though, it is a case where one of the victim namely Dharminder Singh, has suffered gun short injury,

but since he has entered into a compromise with the accused person, and in the compromise he has specifically stated that it is a case of mistaken identity. It is agreed in the compromise that they do not know about the real culprit, and in fact, they have named the accused person on the behest of the public, who have informed them at the time of occurrence.

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) Petitioner has been falsely implicated in the present case;

(ii) It is case of mistaken identity, and the present petitioner is not named in the present FIR;

(iii) The matter stands compromised between the parties;

(iv) As per the compromise effected between the parties, the complainant do not want to pursue the instant complaint, against the present petitioner;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate of the petitioner, as issued by the Additional Superintendent of Central Jail Ferozepur. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 04 months and 05 days, as on today. A perusal of the custody certificate further reveals that the petitioner is not involved in any other criminal case. Learned State counsel has opposed the grant of regular bail to the petitioner, and submits that petitioner is the person who has caused gun short injury to one Dharminder Singh. Learned State counsel on instructions, imparted to him by the official respondent,

submits that the final report had already been filed on 29.02.2024, and the charges are yet to be framed.

ANALYSIS

5. *“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.

6. 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.

7. 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 [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] 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 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.”

8. 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.

9. 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.

10. The reason for forming the above inference emanates from the factum that:- (i) The matter has been compromised between the parties, to the effect that petitioner is not the assailant, rather it is a case of mistaken identity; (ii) The petitioner has suffered incarceration of 04 months and 05 days, as on today; (iii) The final report under Section 173 Cr.P.C was filed on 29.02.2024, (iv) No fruitful purpose would be served by keeping the petitioner behind the bars, (v) Trial is not likely to conclude anytime soon.

FINAL ORDER

11. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioner. 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.

12. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.
13. All pending application(s) stand disposed of accordingly.

09.04.2024
amandeep

(KULDEEP TIWARI)
JUDGE

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