



CRM-M-18765-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(213)

CRM-M-18765-2023  
Date of Decision : 05.09.2024

Ramandeep Singh @ Bhalla ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Dhivya Jerath, Advocate  
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

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KULDEEP TIWARI, J.(Oral)

1. Through the instant petition filed under Section 439 of Cr.P.C., the petitioner prays for grant of regular bail in case FIR No.79 dated 17.05.2022 under Sections 302, 427, 148 and 149 of the IPC, 1860 registered at Police Station Dasuya, District Hoshiarpur (Annexure P-1).

***SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER***

2. Learned counsel for the petitioner submits that the petitioner has suffered incarceration of more than 02 years and 03 months as on date, and asking for the relief (supra), submits that the petitioner is not named in the FIR. Even in the disclosure statement of the main accused, the name of the petitioner does not figure out, rather, his name was figured out on dated 23.05.2022, on the disclosure statement of Harpreet Singh @ Happy.

3. Learned counsel further submits that the weapon of offence i.e. *danda*, which is alleged to have been recovered on the disclosure statement of

the present petitioner, does not connect the present petitioner with the instant



crime. The identification parade which was effected in the police station, at the best carry the evidentiary value equivalent to the statement recorded under Section 161 Cr.P.C. and, therefore, can only be used for the purpose of confrontation, that too by an accused and besides this carries no value. Finally, she submits that most of the star witnesses have turned hostile, except the complainant, who is stated to be an eye-witness, and who was present at the spot, is surrounded by suspicious circumstances.

***SUBMISSIONS OF THE LEARNED STATE COUNSEL***

4. Learned counsel for the State submits that the role of the petitioner is clearly figured out in the disclosure statement of the co-accused Harpreet Singh @ Happy, as one of the assailant, who has caused injuries, with a *danda* and the weapon of offence was also recovered. A specific short reply dated 19.01.2024 filed by way of affidavit of Mr. Harkrishan Singh, PPs, Deputy Superintendent of Police, Sub-Division Dasuya, District Hoshiarpur on behalf of the respondent-State of Punjab, is already on the record wherein, the role of the petitioner is recorded as under :-

*“9. That it is submitted that the petitioners and others were nominated in NOS the present case on the basis of confession statement of accused Kulwinder Singh @ Kindu. On 16.05.2022, the petitioner alongwith Sarabjit Singh @ Sabbi, Satwinder Singh @ Kali, Harpreet Singh @ Happy and Kulwinder Singh @ Kindu caused injuries to Kulvir Singh with Datar, Kirpan and Dandas and murdered him. The petitioner and others were identified by the complainant and weapons used in the commission of the offence were recovered from the petitioner and others. The allegations against the petitioner are of serious nature and as such the present petition is liable to be dismissed.”*



5. Learned State counsel further submits that out of total 20 witnesses cited by the prosecution, 02 have already been examined, and one witness has been given up. He also placed on record the custody certificate, qua the petitioner, dated 04.09.2024, in Court today, the same is taken on record, which reflects that the petitioner is involved in one other criminal case i.e. a case of jail offence, which the petitioner is alleged to have committed while in the custody, in the instant FIR, and as on date, the petitioner has suffered incarceration of more than 02 years and 03 months. The instant FIR has been registered on a statement made by Hardeep Singh, which became the bedrock for the registration of the FIR. The relevant extract of the FIR reads as under :-

*“On 16-05- 2022, my brother Kulveer Singh was going back home from Dasuya on the said vehicle and I was also riding my motorcycle behind my brother, when we reached at Tavern near Tehare at about 8 PM, My brother is fond of drinking alcohol who stopped his vehicle at Tavern in village Tehare then I also parked my motorcycle little behind. Kulwinder Singh @ Kindu who worked in the tavern, son of Shaukeen Singh resident of Village Tihara armed with datar, and other unknown persons armed with datar started attacking the car and broke the windows of my brother's vehicle. Kulwinder Singh @ Kindu took out my brother from car continuously attacked with his datar on his head and other body parts and other unknown persons also attacked my brother with datar. As I am little behind from the card, therefore, I could not identify the unknown persons but I could recognize them when they appeared in front of me. Thereafter all the persons ran away from the spot alongwith their weapons. I take my brother in the same vehicle and brought him to Civil Hospital Dasuya, where*



*the doctor declared my brother dead. After keeping the body in mortuary, I brought my brother Gurnam Singh and relatives to the hospital. The reason of the grudge is that, Kulwinder Singh's wife Gurjit Kaur used to work and take care of the child at my brother's house and Kulwinder Singh has suspicion on his wife and my brother, upon which Kulwinder Singh @ Kindu by keeping grudge with my brother had murdered him in connivance with his companions.”*

### **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 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.”*

10. Also, in **“GudikantiNarasimhulu 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.”*

### **DECISION**

11. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and the rival submissions made by the learned counsel for the parties concerned and is of the considered opinion that the instant petition is amenable to be allowed for the reasons extracted hereinbelow :-



- i) the name of the petitioner does not figure in the FIR and no role whatsoever has been assigned to him. His name is only figured in the disclosure statement of one Harpreet Singh, whose name is also not mentioned in the FIR;*
- ii) Further the identification parade in the instance case was carried out in the police station. The probative value of such identification parade would be adjudicated by the learned trial Court at an apt stage;*
- iii) Further considering the fact that the petitioner has incarceration of about 02 years, 03 months and 11 days and only three prosecution witnesses have been examined so far, this Court is of the considered opinion that further incarceration of the petitioner is totally unwarranted.*

12. Accordingly, the instant petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

13. 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.

(KULDEEP TIWARI)  
JUDGE

September 05, 2024  
Manpreet

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No