

2024:PHHC:056590

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

CRM-M-19095-2024

Date of Decision :April 25, 2024

GURPREET SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Jupinder Pal Singh Brar, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

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.4, dated 06.01.2024, under Section 379 of the IPC (Sections 382, 411, 201 and 34 IPC, and Section 25/27 of the Arms Act, and Section 27 of the Narcotic Drugs and Psychotropic Substance Act, 1985, (for short 'NDPS Act,)), were added later on), registered at Police Station City Malout, Disttrict Shri Mukatsar Sahib.

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR was registered on a statement by ASI Kuldeep Singh. The relevant extract of the FIR reads as under:-

“Statement of ASI Kuldeep Singh No. 125/SMS/PCR Giddarbaha Son of Jarnail Singh, Resident of Street No.11, Patel Nagar, Malout, aged about 54 years, Mobile No. 80549-23225, stated that I am a resident of the said address and posted on PCR, Giddarbaha. My duty shift is from 8.00 AM to 8 PM. On 5.1.2024 at around 8.15 PM, after finishing my duty shift, I took off my uniform and put on civil clothes and drank alcohol and got into my car Honda City No.DL-

7CF-6078 color gray and went to Malout from Gidderbaha. Back at around 8.45 pm. I arrived at Malout town. I was allotted one pistol 9MM No.18596297 with butt no. 159 from Department of Police, District Sri Muktsar Sahib on dated 24.11.2002, which the said pistol 9MM having 08 cartridges in its Magazine was in my possession. After reaching Malout, I went to my friend's house of resident Ekta Nagar Malout, then we both got into my car and started going to my rented house which is at Harjinder Nagar Malout via Burjan Road. When we reached Burjan Gate Malout, my car was suddenly stopped and at the same time another car Skoda Color Black whose number I couldn't read came and stopped behind my car in which there was a sikh youth and three young men whom I asked to push my car, at that time on the dashboard of my car, my service pistol and my 2 mobile phone brand Samsung Touch Screen Color Black. In which Sim No. 78142-43886 and Samsung Keypad Color Black with sim no.80549-23225 and sim no. 94636-47070 were lying. Those unknown youths pushed my car to start, while pushing the car, those youths saw my pistol and my mobile phone lying in my car. From that place, they slowly followed my Skoda Car, when I and my friend reached my rented house, we got out of the car and started opening the main gate of the house and after opening the gate. When I looked in my car, my official pistol and both my mobile phones were not in the car and as soon as, they left in their car. I have a firm belief that four unknown youths in that Skoda Car Stole my official pistol body number 18596297, Butt No.159 including 08 cartridges and my mobile phone Samsung touch screen and Samsung Keypad from my car. I have been searching for that Skoda Car and the unknown youth on my own but, so far I have not been able to find anything about them. I have come to the police station to inform that the Skoda Car unknown youth should be searched and legal action should be taken. I have suffered my statement, heard and admitted to be correct.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. In asking for the relief (*supra*), learned counsel for the petitioner submits that in fact there was no dope test conducted despite Section 37 of the NDPS Act, has been invoked.
4. He further submits that there is no *iota* of allegations, what to talk about evidence, which could bring the case within the ambit of Sections 382 and 411 of the IPC.
5. He further submits at the best it is a case of Section 379 IPC, if at all the case of prosecution treated to be as gospel truth at this stage.
6. He further submits that the petitioner has suffered

incarceration about more than 3 months, and he is not involved in any other criminal case.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. *Per contra*, the learned State counsel opposes the asked for relief of grant of regular bail, and submits that in fact the petitioner and other co-accused, have stolen the service pistol of the complainant-ASI Kuldeep Singh, who had asked the petitioner and other co-accused, to help him to push his case, which unfortunately at the time of occurrence, had stopped.

8. He further, on instructions imparted to him by police official concerned, submits that the final report has been presented and the charges have also been framed by the learned trial Court concerned.

9. He also files a custody certificate *qua* the petitioner, which is taken on record, and, it reflects that the petitioner has suffered incarceration of 3 months and 14 days as on today, and, he is 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 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.

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. This Court has considered the allegations, and *prima facie* is of the view that no offence whatsoever under Section 27 of the NDPS Act, is made out against the present petitioner, and further after considering the fact that the petitioner has suffered incarceration of 3 months and 14 days, as on today, and the trial is at the initial stage, 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.

16. However, it is clarified that if in future, the petitioner is 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.

17. Nonetheless, at this stage, this Court also takes cognizance of the fact that the complainant-ASI Kuldeep Singh, who as per his own version was under the influence of alcohol, was carrying the official pistol at the date and time of the occurrence, let a copy of this order be

sent to the Senior Superintendent of Police concerned, for its examination regarding the conduct the complainant-ASI Kuldeep Singh, and thereupon take appropriate action.

April 25, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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