



CRM-M-21467-2024

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

107

CRM-M-21467-2024

Date of Decision : May 17, 2024

SEEMA

-PETITIONER

V/S

STATE OF HARYANA

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Salinder Kumar Saini, Advocate for
Mr. Pankaj Mehta, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, the petitioner craves for indulgence of this Court for her being enlarged on regular bail, in case FIR No.462 dated 29.10.2023, under Sections 302, 120-B of the IPC, and, Sections 25 and 29 of the Arms Act, registered at P.S. Israna, Panipat.

2. It would be apt to record here that, it was the petitioner, whose complaint had constituted the bedrock for registration of the present FIR, however, subsequently the disclosure statement of co-accused Sawan and the statements of Sunil and Reshma Devi (brother and mother respectively of the deceased), as recorded under Section 161 of the Cr.P.C., resulted in her being transposed as an accused in the present FIR.

SEQUENCE LEADING TO REGISTRATION OF THE PRESENT FIR

3. On 28.10.2023, an information was received from general public regarding emission of foul smell from near the shops situated in front of Ultra-

tech Cement Factory. On receiving this information, ASI Amrital, 70, PPT

**CRM-M-21467-2024****2**

alongwith Ct Ravi No.1450 reached the site. They broke open the lock of the room situated above the shops and found one dead body of young boy. On enquiry, the dead body was found to be of Anil R/o Village Pardhana. Thereafter, his brother namely Sunil was informed. He came on the spot and identified the dead body to be of Anil S/o Ramdhan R/o Village Pardhana, Panipat. In the meantime, Station House officer, P.S Israna and FSL Crime Scene Visit Team reached at the spot. Photographs of the spot and sample of blood lying on the spot were collected on the directions of FSL Crime Scene Visit Team and were taken into police possession as evidence after preparing its parcel and affixing seal of AL/1 on it. After some time, wife of deceased namely Seema (Petitioner) came on the spot and gave a written complaint to the police officials present at the spot. The contents of the complaint are reproduced hereinafter:-

“I am Seema W/o Anil, R/o Village Pardhana, District Panipat. I have four girls. My husband Anil used to do job of spreading tarpaulin on trucks in Ultra Tech Cement Factory. On 20.10.2023, my husband Anil had gone on duty in the shift of 2.00 pm. At about 08.00 pm, he called me from the mobile phone of his colleague namely Sawan S/o Ramphal through mobile no. 8607121577 and had normal talk with me. Thereafter, my husband did not return. I called on mobile phone of his colleague Sawan but he did not receive the call. I searched for him in cement factory where I came to know that he had left the premises after duty and was with Sawan at night. I went to the rented room of said Sawan, which was found to be locked and I subsequently went to the house of Sawan at Village Ahar but no clue could be found. On that day, at about 06.00 pm, foul smell was emanating from near room of Sawan in front of cement factory and on information of people, police recovered the decomposed dead body of my husband from rented room of Sawan. My brother-in-law Sunil @ Nanha was also present at the spot, who informed about death of Anil. After receiving the information, I and my family reached there. The police met me on the spot and



I suspect that Sawan took my husband to his room with the intention of killing him and due to some rivalry while working together, he had committed murder of my husband by hitting with a weapon. Stern legal action be taken against accused Sawan who is absconding after committing the murder. Postmortem of my husband be got conducted and dead body be handed over to us.”

4. Based on the hereinabove extracted statement, initially the present FIR was registered under Section 302 of the IPC, however, during the course of investigation, offence under Section 120-B of the IPC and Sections 25/29 of the Arms Act were also added.

DETAILS OF INVESTIGATION, AS BECAME CARRIED OUT AFTER REGISTRATION OF THE PRESENT FIR (AS PER STATUS REPORT FILED BY RESPONDENT-STATE)

5. The learned counsel for the respondent-State has filed a status report, on affidavit of Dharamvir Singh, HPS, Deputy Superintendent of Police, HQ, Panipat, which is taken on record.

6. The status report reveals that, after registration of the present FIR, proceedings under Section 174 of the Cr.P.C. were initiated at Civil Hospital, Panipat, however, since the dead body was in decomposed state, therefore, it was referred to PGIMS, Khanpur. Thereafter, co-accused Sawan was joined in the investigation and upon finding incriminatory evidence against him, he was formally arrested. During investigation, co-accused Sawan confessed his role in commission of the crime and suffered a disclosure statement, thereby disclosing that he had, in conspiracy with the present petitioner, killed the deceased Anil by firing upon him. Moreover, in pursuance of his disclosure statement, he also got recovered .315 bore country-made pistol, one live cartridge and one empty cartridge on 01.11.2023. Thereafter, on 30.10.2023, the



CRM-M-21467-2024

4

statements of Sunil and Reshma Devi (brother and mother respectively of the deceased) were recorded under Section 161 of the Cr.P.C., wherein, they suspected the petitioner to be involved in murder of the deceased, inasmuch as, the petitioner and co-accused Sawan were having extramarital relations. Accordingly, on 30.10.2023, the petitioner was joined in the investigation and thereupon arrested also. During investigation, the petitioner also confessed her role in commission of the crime and got recorded her disclosure statement, *inter alia* stating that, co-accused Sawan had killed the deceased Anil on her directions.

ROLE OF THE PETITIONER (AS PER STATUS REPORT FILED BY RESPONDENT-STATE)

7. The relevant paragraph of the status report, thus speaking about the role of the petitioner in the crime, is reproduced hereinafter:-

“3. That the role of the petitioner is that she was in extra marital relations with co-accused Sawan. Therefore, she conspired with co-accused Sawan to eliminate Anil so that she does not cause hindrance in their relations. In pursuance of their conspiracy, co-accused Sawan killed her husband/ Anil on 20.10.2023 by using country made pistol. The petitioner has confessed to her role in crime in her disclosure statement, Annexure R-5. Moreover, mother-in-law of the petitioner and brother-in-law of the petitioner has specifically named the petitioner to be involved in the crime in their statements under section 161 of Cr.P.C, Annexure R-3 and Annexure R- 4. Moreover, co-accused Sawan has also specifically named the petitioner to be involved in the commission of crime in his disclosure statement, Annexure R-1.”

8. What transpires from the status report is that, apart from the statements (supra), another significant piece of evidence collected by the investigating agency, is the call detail records of Mobile Numbers 86071-21577 (registered in the name of co-accused Sawan) and 90509-72361 (registered in the



CRM-M-21467-2024

5

name of deceased Anil, but used by his wife/petitioner), which reveal that they were in constant touch with each other on 20.10.2023 and even prior thereto.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

9. The learned counsel for the petitioner, in his asking for the relief of regular bail, has made the following submissions:-

(i) Except the disclosure statement of co-accused Sawan and the alleged confessional statement of the petitioner, which were in fact recorded in police custody and are thus inadmissible in evidence, the investigating agency is not seized of any other cogent inculpatory evidence against the petitioner to prove her involvement in the crime;

(ii) The call detail records constitute a weak piece of evidence, inasmuch as, the same pertain to the mobile, which was in fact registered in the name of the petitioner's husband/deceased Anil. Moreover, the petitioner has, in her complaint for registration of FIR, categorically recorded that, since her husband had departed with co-accused Sawan, therefore, when he went missing, she contacted co-accused Sawan on his mobile to know the whereabouts and well beings of her husband;

(iii) Petitioner has undergone incarceration of approx. 06½ months and she has clean antecedents;

(iv) Petitioner is in advanced stage of pregnancy and the expected delivery date, as given by the doctor, is 27.06.2024;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. *Per contra*, the learned State counsel has vehemently opposed the

**CRM-M-21467-2024****6**

grant of bail to the petitioner, on the ground that, the petitioner is the main conspirator behind murder of her husband and her motive is also clearly spelt out in the status report. Therefore, when the petitioner has got her own husband eliminated, she does not deserve any leniency.

11. The learned State counsel has also placed on record the custody certificate of the petitioner and her medical status report, on affidavit of the Superintendent, District Jail, Panipat, I.R.O. The relevant extract of the medical report, which is annexed as Annexure R-2 with the affidavit (supra), is reproduced hereinafter:-

“Certified that Seema W/o Anil was admitted at District Jail, Panipat on dated 31.10.2023. Patient is primigravida with L.M.P 23-09-2023. According to latest ultrasound report (dated 16.02.2024) from Civil Hospital Panipat EDOD (Expected date of Delivery) is 27.06.2024. On Dated 04-11-2023 and 14.11-2023 patient was sent to Civil Hospital Panipat in Gynecology Department for regular check up where blood and some other investigation were done and patient advised for ultrasound by Gynecologist. Later on patient complained of vaginal bleeding for which she was referred to Civil Hospital, Panipat on date 07.12.2023 where patient got admitted. During her admission period at Civil Hospital, Panipat Ultrasound and some other investigations were done. Ultrasound report of dated 07.12.2023 confirmed single live intrauterine gestation of 10 Weeks 6 Days $\pm$ 1 Week and treated as per advised. On dated 08.12.2023 patient got discharged from Civil Hospital, Panipat and came back at District Jail, Panipat. Later on patient complained of fever, vertigo and generalized weakness for which patient was referred to Civil Hospital, Panipat dated 04.01.2024, 16.01.2024, 22.01.2024, 24.01.2024 and 04.05.2024 regarding her complains and routine follow up in Obs/ Gynee department where routine as well as required investigations were done accordingly. Again patient was sent to Civil Hospital, Panipat on dated 09.05.2024 and 13.05.2024 for routine follow up, USG-FWB. and Gynecologist opinion where patient treated accordingly. On dated 16.05.2024 patient was sent to Civil Hospital, Panipat for Ultrasound on urgent basis where



CRM-M-21467-2024

7

ultrasound was done and report showed fetal maturity 34 ± 2 weeks and patient treated as advised by Gynecologist.

*At Present :- At present Blood-pressure of patient is 108/68 mm-Hg, Pulse rate of patient is 80 bpm. Fetal movement is normal and regular. As per Gynecologist at Civil Hospital, Panipat **EDOD (Expected date of Delivery) 27 June 2024**. Patient is being provided protein rich Diet (Milk & Paneer). Patient will be sent to Civil Hospital, Panipat for specialist opinion as and when required”*

ANALYSIS

12. 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.

13. “*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.

14. 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.

15. 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 de-



fend 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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XX

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."

16. 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 or 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 com-



mitting 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."

17. Be that as it may, this Court has considered the case at hand in its totality, whereupon, it emerges that the case is based upon circumstantial evidence. Therefore, considering the hereinabove made submissions, especially the fact that: (i) the expected delivery date of the petitioner is 27.06.2024; (ii) as per custody certificate, the petitioner has suffered incarceration of approx. 06½ months and has clean antecedents, inasmuch as, she is not involved in any other criminal case; (iii) trial is at its initial



stage and is not likely to conclude anytime soon, as out of total 25 prosecution witnesses, none has yet been examined, therefore, subjecting the petitioner to prolonged incarceration would serve no fruitful purpose; this Court deems it 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.

18. 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 17, 2024
devinder

(KULDEEP TIWARI)
JUDGE

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