

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2024:PHHC:097576



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CRM-M-21077-2024
Date of decision: 31.07.2024

Lehmber Singh		Petitioner
	Versus	
State of Punjab		...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Arshdeep Singh Brar, Advocate
for the petitioner.
Mr. Sahil R. Bakshi, 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.24 dated 11.05.2023, under Section 302, 323, 148, 149, 120-B IPC registered at Police Station Smalsar, District Moga (Annexure P-1).

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR has been registered on a complaint made by one Chamkaur Singh son of Sadhu Singh which reads under:-

“Statement of Chamkaur Singh son of Sadhu Singh son of Pritam Singh, resident of Shekhan Kalan, aged about 40 years. Mobile No.98144-60387. Stated that I am resident of the said address and I do agriculture work. We are 3 brothers and sisters. I am the eldest and my younger brother is Gurtej Singh and youngest is sister Amandeep Kaur, who is already married. My mother Baljit Kaur has died. We both brothers live together with our father Sadhu Singh. We have a good business. We have about 2 Killa land and we do cultivation by taking some land on lease. Our residence is in fields. Baba Rakhardass Tap Asthan is located at a distance of about 10 Killa away from our residence,

where a lot of people come from far and wide. My father Sadhu Singh, who is almost 70 years old often used to go to Baba Rakhradass Tap Asthan for offering service and sometimes while doing service there, he used to stay at Baba Rakhradass Tap Asthan and sometimes, he used come back home. Similarly, my father did not come home till night on 10.05.2023. So, today on 11.05.2023, I raised doubts with my brother Gurtej Singh about my father Sadhu Singh not coming home, then my brother Gurtej Singh consoled me that our father Sadhu Singh used to stay at Baba Rakhradass Tap Asthan earlier as well, so, he has not come today as well. Then at 12:00 PM, I received a call on my mobile No.98144-60387 from mobile No.98145-21581 of Darshan Singh son of Jeeta Singh, resident of Shekhan Kalan, a committee member of Baba Rakhradass Tap Asthan saying that I should come to Babaji's Dargah as soon as possible, as some untoward incident has occurred. So, I accompanied by my brother Gurtej Singh reached at Baba Rakhradass Tap Asthan, where on the floor of the veranda built below the stage, dead body of my father Sadhu Singh was lying in a pool of blood. Many people were standing at the spot. When Darshan Singh, committee member showed the photos of the CCTV camera, we were amazed that Ranjit Singh @ Raja Khokhar son of Tota Singh son of Joginder Singh of our village armed with iron pipe, wearing a t-shirt and a blue colour lower having white colour strips, Kala Singh son of Major Singh wearing white colour T-shirt, white colour strips shorts armed with brick, Sukhchain Singh alias Raja (Bhagatewale) son of Balwinder Singh wearing large strips T-shirt and strips lower, Lehmbhar Singh son of Baljinder Singh @ Nikka Singh wearing blue colour boxes T-shirt and grey colour pant and Tarsem Singh alias Rajveer son of Surjit Singh wearing only pant without shirt, residents of Shekhan Kala were present there. Ranjit Singh alias Raja was continuously hitting merciless iron pipe blows on the head, legs and other body parts of my father Sadhu Singh, whereas Kala Singh was also hitting merciless blows of brick on the head and other body parts of my father and Sukhchain Singh @ Raja Bhagtewala, Lehmbhar Singh and Tarsem Singh were standing near there and inciting to beat up my father instead of saving him. When 2 unknown persons on a motorcycle came forward to save my father, they were also brutally beaten by said persons. Due to which, my father died in agony while not being able to bear the heat of beatings. Grudge behind the occurrence is that said persons used to demand money from my father Sadhu Singh. My father had told me earlier about the demand of money raised by said persons, who used to harass him. I told my father that these are residents of our village. I will definitely try to make them understand. A few days ago, all of them met me on the main road Thatthi Bhai to Shekhan Kalan in the evening

under the influence of liquor, who told me that I should make my father understand as he does not listen to them, otherwise he may have to suffer dire consequences. Due to said grudge, Ranjit Singh alias Raja Khokhar, Kala Singh, Sukhchain Singh alias Raja Bhagteewala, Lehmbar Singh and Tarsem Singh have beaten up and killed my father Sadhu Singh. I alongwith Darshan Singh was going to the police station to report the matter by leaving my brother Gurtej Singh at the spot but you met us on the way. I got my statement recorded before you, read it, heard it and the same is correct. Kindly take action. Sd/- Chamkaur Singh, verified by Sd/- Darshan Singh, Committee Member, son of Jeeta Singh, resident of Shekhan Kalan. Attested by Sd/- Jaswinder Singh. SI/SHO P.S. Smalsar dated 11.05.2023. Police proceeding:- Today. I. SI/SHO alongwith ASI Kuldeep Singh No.113/FDK, ASI Harpal Singh No.825/Moga, S/Ct. Harmandeep Singh No.1197/Moga. S/Ct. Amarjit Kaur No.428/Moga and HC Manpreet Kaur No.559/Moga alongwith laptop-printer in Government vehicle No.PB-29-X-6638, which was being driven by S/Ct. Harmandeep Singh No.1197/Moga, reached at the gate of Baba Rakhradass Tap Asthan on getting complaint on helpline No.112, where Chamkaur Singh met alongwith Darshan Singh, Committee Member and the said Chamkaur Singh got recorded his statement before me, which was read over to him word by word, who after admitting the same to be correct appended his signatures in Punjabi under his statement, whereas Darshan Singh. Committee Member verified the same and I, SI/SHO attested the said statement. From the contents of statement, offence under Sections 302/120-8/148/149 of IPC is found to be made out.. Accordingly, statement is being sent to police station by hand through S/Ct. Amarjit Kaur No.428/Moga for registration of FIR against Ranjit Singh @ Raja Khokhar son of Tota Singh son of Joginder Singh, Kala Singh son of Major Singh, Sukhchain Singh alias Raja (Bhagteewale) son of Balwinder Singh, Lehmbar Singh son of Baljinder Singh alias Nikka Singh and Tarsem Singh alias Rajveer son of Surjit Singh, residents of Shekhan Kalan. After lodging FIR, number of which be informed. Special reports be issued to senior officers via wireless message through Control Room. I. SI/SHO alongwith complainant am moving towards the place of occurrence. Sd/- Jaswinder Singh, SI, SHO P.S. Smalsar dated 11.05.2023. Today, within the area of Shekhan Kalan at 06:30 PM. Today, on receiving of said statement at police station, FIR was registered against accused for the respective offences. Thereafter, copy of FIR alongwith original statement is being sent SI/SHO Jaswinder Singh No.14/LPCT at the spot by hand through S/Ct. Amarjit Kaur No.428/Moga for conducting investigation. After preparing special reports. same are being

sent to Ilaga Magistrate and senior officers by hand through S/Ct. Bikramjit Singh No.1259/Moga. PCR Moga is being informed.”

On the basis of the above allegations, the instant FIR was registered.

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) The petitioner was only standing at the place of occurrence, and has not been attributed any specific role.*
- (ii) Learned counsel for the petitioner draws attention of this Court to Annexure P-2, i.e. High Court order whereby co-accused has been extended the relief of regular bail.*
- iii) Petitioner has suffered incarceration of approximately 10 months, as on today;*
- (iii) The trial of the case is at an initial stage.*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Per contra, the learned State counsel, has vociferously opposed the grant of regular bail to the petitioner and a short reply by way of affidavit of DSP Sub Divn. Baghapurana, District Moga has been filed which is taken on record. It is stated therein, that the petitioner along with other accused was standing at the place of occurrence, and has provoked the co accused, Sukhchain and Tarsem, which led them caused injury to the victim.

ANALYSIS

5. 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.

6. “*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.

07. 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.

08. 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 5 of 9 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."

09. 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 6 of 9 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 bifocal 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

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 7 of 9 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 sociogeographical 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."

10. 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.

11. The reason for forming the above inference emanates from the factum that:- (i) The only allegation against the petitioner is that he was standing along with other accused, at the place of occurrence, and he has not attributed any injury to the victim; apart from that, the co accused who is on equal pedestal has been extended the relief of regular bail by this Court (ii) The petitioner has suffered incarceration of 10 months and 05 days, as on today;

iii) No fruitful purpose would be served by keeping the petitioner behind the bars, (vi) Trial is not likely to conclude anytime soon.

FINAL ORDER

12. 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.

13. 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.

14. 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.

15. All pending application(s) stand **disposed** of accordingly.

31.07.2024

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(KULDEEP TIWARI)
JUDGE

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