



CRM-M-21919-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(220)

CRM-M-21919-2024  
Date of Decision : 12.09.2024

Kulwinder Kaur ...Petitioner  
Versus  
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. R. K. Kachura, Advocate  
for the petitioner.  
  
Mr. Sahil R. Bakshi, AAG, Punjab.  
  
Mr. Amaninder Singh Sekhon, Advocate  
for the complainant.

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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.53 dated 04.08.2023 under Sections 302, 506, 148 and 149 of the IPC, 1860 (Section 120-B of the IPC added later on) and under Section 25 of the Arms Act, 1959 (Section 27 of the Arms Act, deleted later on) registered at Police Station Sadiq, District Faridkot.

*SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER*

2. The prosecution agency was set into motion, on a complaint made by Budh Singh, son of Sher Singh, wherein, it is alleged that one Amandeep Singh @ Ghopa, son of Gurpreet Singh, son of the present petitioner, has caused gun shots injury to Harbhagwan Singh, and later on, he succumbed to the gun-shot injury. The reasons/motive for causing injury, is



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that the complainant party was actively campaigning in the village against the drug peddlers, and one of the accused Avtar Singh @ Tara, was called in the Panchayat, and he was asked to mend his ways, the said incident turned into an ugly scene, and immediately, after half an hour, all the accused persons came on the spot, and thereupon, Amandeep Singh @ Ghopa, caused gunshot injury to Harbhagwan Singh. The relevant extract of the FIR (supra), reads as under :-

*“In furtherance to that yesterday on dated 03.08.2023, a person doing business of drug in our village namely Avtar Singh @ Tara son of Gurnam Singh resident of Dhilwan Khurd was stopped and restrained from doing the business of drugs by residents of our village after going to his house. Who, by taking it as pain, exchanged words on this with the residents of the village. At that time, me and my brother Harbhagwan Singh son of Tota Singh resident of Dhilwan Khurd were also accompanying. At that time too, above said Avtar Singh @ Tara threatened to teach lesson to all. Thereafter, today on dated 04.08.2023, gathering was called by all the residents of the village at about 3:30 in the afternoon, against the drugs at a common place of our village in which above said Avtar Singh @ Tara was also called. That above said Avtar Singh @ Tara himself came there and used many bad words towards the residents of the village and went by threatening that I will teach you a lesson right now. After some time, at about 4:00 PM above said Avtar Singh @ Tara, his wife Ramandeep Kaur wife of Avtar Singh @ Tara, his son Gursharan Singh son of Avtar Singh @ Tara and his friend residing with him namely Amandeep Singh @ Ghopa son of Gurpreet Singh resident of Dhilwan Khurd his and mother Kulwinder Kaur wife of Gurpreet Singh resident of Dhilwan Khurd, all of them again came at a common place of our village where above said*



*Amandeep Singh @ Ghopa was having a pistol in his hand and above said Avtar Singh @ Tara was holding a iron rode. Thereafter, all of them made a noise and by raising a lalkara that this Harbhagwan Singh instigate everyone against us and let a lesson be taught to him, upon this above said Amandeep Singh @ Ghopa at that time, direct fired with his armed pistol towards my brother Harbhagwan Singh son Tota Singh resident of Dhilwan Khurd at his chest in front of me and all the residents of the village. That he fell down at that time. Thereafter, on making noise by the residents of the village, these all persons ran away from the spot along with wqeapons by giving threats. Thereafter, me and Pappu Singh son of Jaswant Singh resident of Dhilwan Khurd arranged a vehicle on the spot and took above said Harbhagwan Singh to Guru Gobind Singh Medical College and Hospital, Faridkot where the the doctor declared above said Harbhagwan Singh dead in the emergency ward.”*

3. Learned counsel for the petitioner, on asking for the relief of regular bail submits that as per the prosecution case, petitioner was present at the spot empty handed. He further submits that i) whether, she can be considered as a member of unlawful assembly, as no overtact has been attributed to her, which is a moot question of law, which has to be adjudicated by the learned trial Court concerned, at an appropriate stage; ii) petitioner is not involved in any other case pending or registered against her, therefore, she cannot be considered as a person, who is involved in drug peddling in the vicinity of the village of the complainant; iii) petitioner has suffered incarceration of more than 01 year and 01 month, as on today, and the trial is yet to begin; iv) she has been involved in the instant FIR (supra),

after due deliberations, simply because of the reason, being the mother of the



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main accused, who gave the gun-shot injury to the deceased; v) only a vague allegations of raising *lalkara* is attributed to all the accused persons.

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

4. Custody certificate dated 11.09.2024, qua the petitioner, furnished by learned State counsel today in the Court. The same is taken on record.

5. Learned State counsel has also placed on record short reply dated 11.09.2024, by way of affidavit of Mr. Shamsheer Singh, PPS, Deputy Superintendent of Police, Sub Division Faridkot, District Faridkot, on behalf of the respondent-State of Punjab, today in the Court. The same is taken on record. Copy thereof, supplied to learned counsel for the petitioner.

6. On instructions imparted to learned State counsel from the Investigating Officer concerned, the prayer for relief of regular bail, made by the learned counsel for the petitioner was strongly opposed by the learned State counsel assisted with Mr. Amaninder Singh Sekhon, learned counsel for the complainant. It is submitted that the complainant party was just restraining Avtar Singh @ Tara, who is indulged in selling the contraband in the village, so as to protect the young children of the village, from being drug addict. The role of the petitioner is very clear, as many eye witnesses have been cited by the prosecution, wherein, she was stated to be present at the spot, when her son opened gun-shot fire upon the deceased, therefore, she being the member of unlawful assembly, is not at all entitled to grant the relief of regular bail and further submits that weapon of offence is also recovered from the son of the present petitioner.

**ANALYSIS**

7. 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.

8. *“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.

9. 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

10. 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."

11. 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 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***

12. 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) There is no specific role, or any overact is attributed to the present petitioner, except being present at the spot;***
- ii) The petitioner has suffered incarceration of about 01 year, 01 month and 03 days, as on today, and the fact that she is not involved in any other case;***
- iii) Whether, the petitioner’s presence at the spot would invite the rigours of Section 149 IPC, is the moot question of law, which is to be adjudicated by the learned trial Court, at an appropriate stage;***
- iv) Trial is yet to begin and till today, only charges have been framed, and no prosecution witnesses have been examined, whereas, the prosecution has cited 28 prosecution witnesses, in the final report.***

13.           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.

14.           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 12, 2024  
Manpreet

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