



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

224

CRM-M-22855-2024
Date of decision: 25.07.2024

SURAJPetitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Jasmine, Advocate for
Mr. Prateek Sodhi, Advocate
for the petitioner.

Mr. Sahil R. Bakshi, AAG, Punjab.

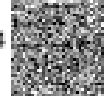
KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.117 dated 19.07.2022, under Sections 302 and 34 of IPC (Section 324 of IPC added later on), registered at Police Station Majitha, District Amritsar Rural.

ALLEGATIONS AGAINST THE PETITIONER

2. The allegations against the present petitioner are that, he along with one Ajay alias Ajaypal Singh, caught hold of the deceased, and the other co-accused Sanjay gave a sickle blow upon the neck of the deceased-Pawanjit, which subsequently proved to be a fatal blow.

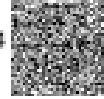
3. The prosecution agency was set into motion on a statement made by



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one Karanjit Singh, the relevant part of the same reads as under:-

“Statement of Karanjit Singh S/o Harjit Singh R/o Galowali Colonia Police Station Majitha District Amritsar Aged around 19 Years Mobile 9878897085 Stated that I am resident of above mentioned address and am doing work of fixing tiles and Marble, we are three brothers. Eldest one is Amritpal, younger than him is me and youngest one is Pawanjit Singh aged around 16 years, yesterday on dated 18.07.2022 all of us four brothers were present in house then in village itself there was birthday party of daughter of Karan son of Shiv Kumar, in which my elder brother Amritpal had also gone, since there was excess dark so in order to get him back me and my younger brother Pawanjit Singh and our father Harjit Singh had gone, then time was around 9.00/9.30 at night we saw that Ajay Kumar Parkash, Suraj son of Rampal, Sanjay son of Vijay Pal and Deepak present Sarpanch son of Galowali Colonies were arguing with my brother due amid some issue then we stopped them from arguing then Deepak Sarpanch raised challenge and said that caught hold them and let them teach him a lesson for arguing with us and then Ajay and Suraj caught hold my brother Pawanjit from his arms and Sanjay gave Sickle blow upon my brother Pawanjit which hit him on the right side of his throat then he ensanguined with blood and fell down on the floor, me and my father in order to disengage him went ahead then Sanjay again gave sickle blow upon my father which hit him upon his inside of his right thigh we raised clamour of killed - killed then above named assailants fled from the spot along with their respective weapons, this entire incidence has been seen by my brother Amritpal Singh and father Harjit Singh, we made arrangement of vehicle took our brother at Bajwa Hospital Majitha, where Doctors checked my brother outside the Hospital itself and told that he has since been died, till date in concern of death of our brother we were busy while telling our family members and relatives, I left dead body of my brother with my father was coming to you to inform, that you met me, I have recorded my statement to your goodself, above named accused persons in consultation with each other have inflicted injury to my brother and committed his murder. Appropriate legal action may be initiated against them. I have heard my statement, it is correct sd/- Karanjit Singh above named, attested sd/- Jungbanadur Singh SI Police Station Majitha dated 19.07.2032. Police Proceedings:- Today myself St along with SI Tarlok Singh 1425, ASI Baldev



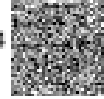
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Raj 1135, AST Jagdeep Singh 362, ASI Gurnam Singh 318, HC Sukhwinder Singh 311, HC Jaspal Singh 1801, CT Resham Singh 03, L/CH Parminderjit Kaur 736, PHG Sarabjit Singh 19685 boarding Government vehicle whose driver is ASI Tanjit Singh 484, along with Laptop Printer kit in connection of patrolling was present at Bus Stand Majitha that Karanjit Singh son of Harjit Singh above named come present to me and recorded his above mentioned statement, which was read over to him, Who, upon reading his statement, accepting it as correct appended his signatures underneath the same in Punjabi, I attested it. Keeping in view of above mentioned statement prima facie a case is made out under section 302, 34 of IPC. Whereby for registration of case it is being sent by hand through CT Resham Singh 03 to Police Station. After registration of the case number of the case may be informed. Special Reports may be issued and sent for the kind perusal of Ilaga Magistrate and concerned senior officers. Control Room may be informed. Myself A.S.I along with fellow employees accompanied by complainant of the present case am proceeding to the place of incidence for initiating proceedings. Today in the area of Bus Stand Majitha AT 3:20 AM Sd/-Jungbahadur Singh S1 Police Station Majitha dated 19.07.2022. Today at Police Station:- At present upon receipt of above mentioned statement in Police Station, above mentioned case was registered under above mentioned sections, original statement along with copy of FIR is being sent through arrived CT to responsible SI at the spot for further investigation. Special reports are issued and are being sent for the kind perusal of Ilaga Magistrate and senior officers by hand through ASI Ripanjit Singh 1280. Control room is being informed, Closure report Number 09 Time 04.25 AM.”

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 only role attributed to the present petitioner is that the petitioner has caught hold of the deceased, and he has not attributed any injury to him;

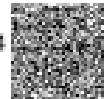


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- (ii) The co-accused Deepak Kumar @ Deepak, has already been granted the relief of regular bail by this Court, vide order dated 07.03.2024;
- (iii) Petitioner has suffered incarceration of more than 02 years, as on today;
- (iv) Out of the total 22 prosecution witnesses cited in the final report, none has been examined till date.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Short reply by way of affidavit dated 15.07.2024, of Sh. Jaspal Singh, PPS, Deputy Superintendent of Police, Sub-Division Majitha, Amritsar has been filed on behalf of respondent-State. The same is taken on record
5. Learned State counsel has vociferously opposed the grant of regular bail to the petitioner on the ground that, petitioner is the one who facilitated Sanjay to give a sickle blow, and had he, and the other co-accused not caught hold of the deceased-Pawanjit, the main accused accused Sanjay would not have succeeded in causing the fatal blow on the neck of the deceased-Pawanjit. Learned State counsel further submits that the bail application of the co-accused Ajay Alias Ajaypal Singh has already been dismissed by the Co-ordinate Bench of this Court, vide order dated 20.07.2023.
6. Learned State counsel has placed on record the custody certificate of the petitioner, as issued by the Superintendent of Central Jail Amritsar. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 02 years and 02 days, as on today. A perusal of the custody certificate further reveals that the petitioner is involved in any other criminal case.



Learned State counsel on instructions, imparted to him from the official respondent, submits that out of the total 22 prosecution witnesses cited in the final report, none has been examined till date.

ANALYSIS

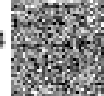
7. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

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 of offence(s) involved.

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".

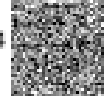
30. In American Jurisprudence (2d, Vol. 8, page 806, para 39) it is stated :

"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



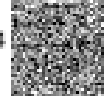
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to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, 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 bifocal interests of justice - to the individual involved and society affected.

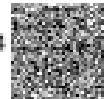
11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody. And if public justice is to 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 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.”



12. 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.

13. The reason for forming the above inference emanates from the factum that:- (i) The petitioner has suffered incarceration of 02 years and 02 days, as on today; (ii) Out of the total 22 prosecution witnesses cited in the final report, none has been examined till date; (iii) The petitioner is not involved in any other criminal case; (iv) The only role attributed to the present petitioner is that he had caught hold of the deceased, and no injury is attributed to the present petitioner; (v) Though co-accused Ajay Alias Ajaypal Singh, who is on equal pedestal, whose bail application was dismissed by the Co-ordinate Bench of this Court, vide order dated 20.07.2023, but the same was dismissed a year ago, and for the last one year, there is no progress in the trial, as no prosecution witness has been examined so far; (vi) It is settled law that each day of confinement gives a fresh cause of action in favour of the accused, to maintain a regular bail application, therefore, dismissal of the bail application of the co-accused, who is on equal pedestal a year before, would not have any legal impediment for this Court to consider the case of present petitioner for grant of regular bail.

FINAL ORDER

14. 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.

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

25.07.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. :
Whether Reportable. :

Yes/No
Yes/No