

2024:PHHC:008947

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

208

CRM-M-29696-2023 (O&M)  
Date of Decision : January 23, 2024

KAMAL MALIK

.....Petitioner

*VERSUS*

STATE OF HARYANA

....Respondent

**CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Rahul Jaswal, Advocate  
for the petitioner.

Mr.Abhinash Jain, DAG, Haryana.

**KULDEEP TIWARI. J.(Oral)**

**CRM-28519-2023**

1. The application is allowed as prayed, subject to all just exceptions.

**CRM-M-29696-2023**

2. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.116, dated 28.03.2019, under Sections 186, 353, 307 and 34 of the IPC, and under Sections 25/54/59 of the Arms Act, registered at Police Station Dharuhera, District Rewari.

**ALLEGATIONS AGAINST THE PETITIONER**

3. The case as set up by the prosecution, against the present petitioner is that, the petitioner is a habitual offender and he alongwith

other co-accused, is about to commit some heinous offence. On the basis of secret information as received by the investigating agency, a raid was conducted. It is the story of the prosecution that during the raid, there was an exchange of gunshots between the accused and the police party.

4. As per the prosecution story, the petitioner was arrested from the spot, with a countrymade pistol of .315 bore, and currency notes amounting to Rs.49.75 lacs was also recovered from a car make Hyundai Xcent. One empty and one live cartridge was also recovered from the petitioner.

#### **SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER**

5. Learned counsel for the petitioner submits that the petitioner is behind the bars since 02.04.2019, in the instant FIR, and the trial is moving at snails pace.

6. He further submits that though in the FIR Section 307 of the IPC, has been incorporated, however, it is a case where no one suffered any gunshot injury. Therefore, considering the period of incarceration as suffered by the petitioner, he may be released on regular bail.

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

7. *Per contra*, the learned State counsel opposes the asked for relief of grant of regular bail to the present petitioner, and he has filed a reply dated 20.01.2024, by way of an affidavit of Mr. Deepak Saharan, SSP, Rewari, which is taken on record.

8. He has also placed on record a custody certificate *qua* the petitioner, which is taken on record, and further submits that the

petitioner is a habitual offender and is involved in other criminal cases as well.

### **ANALYSIS**

9. *“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.

10. 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.

11. 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.”*

12. 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.*

13. 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.

14. A perusal of the reply filed in this case, reveals that on account of various reasons, the trial could not proceed in right directions, and infact, despite petitioner being in custody for the last 4 years and 10 months and 23 days and out of the total 24 prosecution witnesses, only 6 have been examined till date, and 2 witnesses have been given up by the public prosecutor being unnecessary.

15. Though the petitioner is stated to be involved in four more cases, in one of the cases he has been convicted for life imprisonment, in second case he is on bail, in third case he has been discharged from the charges levelled against him, and in the fourth case, he is stated to be acquitted by the learned trial Court concerned.

## **FINAL ORDER**

16. Considering the fact that the petitioner has suffered incarceration of 4 years, 10 months and 23 days as of today, and, other co-accused-Shiv Kumar, has already been granted the concession of regular bail by a co-ordinate Bench of this Court on dated 04.08.2023, in CRM-M-36947-2023 and out of total 24 prosecution witness, only 6 have been examined so far, 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.

17. 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.

**January 23, 2024**  
*dharamvir*

**(KULDEEP TIWARI)**  
**JUDGE**

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