

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

215

CRM-M-31295-2023
Date of decision: 16.01.2024

HUSANPREET SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sandeep Gahlawat, Advocate with
Mr. R.K. Kashyap, Advocate
for the petitioner.

Ms. Navreet K. Barnala, 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.006 dated 17.02.2023, under Sections 302, 379 and 34 of IPC, and under Sections 4(1) and 21(1) of Mines and Minerals (Regulation of Development Act), 1957, at Police Station Handesra, District SAS Nagar (Mohali).

ALLEGATIONS AGAINST THE PETITIONER

2. The genesis of occurrence arise on a statement made by one Bhupender Singh, son of Gurcharan Singh, which led to registration of FIR against one Jaswinder Singh @ Kala, Jaswinder Singh @ Chinda, Harvinder Singh @ Guggu,

and one unknown person.

The gist of the complaint reads as under:-

"Statement of Bhupender Singh s/o Gurcharan Singh, resident of Village, Badana, P.S. Handesra, District S.A.S. Nagar, aged about 36 years, M. No.81462-96496.

Stated that I am resident of above mentioned address and agriculturist by profession. Yesterday i.e. on 16.02.2023 at about 10:30/11:00 P.M. illegal mining was being carried out in our village. After hearing the noise of tractor, my father Gurcharan Singh Son of Sardara Singh, Mahinder Singh son of Surmukh Singh, resident of Badana, reached at the spot for seeing the tractor. They stopped one tractor at the spot and asked him that where the soil of shamlat land is going; upon which the driver of tractor disclosed that Harvinder Singh @ Gaggu son of Kirpal Singh is taking out the aforesaid soil of shamlat land. Thereafter, my father asked him that either to call Harvinder Singh or the village Panchayat at the spot. Upon which the driver of tractor replied that he would call them within time. Then, the above said driver made a telephonic call to someone and he called 5-7 persons at the spot who all asked to leave them and to allow their tractor to go back. They promised that they will call Harvinder Singh @ Gaggu at the spot. Immediately 4 more persons came at the spot; out of whom one was Jaswinder Singh S/o Chajju Singh, who is owner of tractor, Jaswinder Singh S/o Bir Singh told us that no issues "I will run the tractor and thereafter one another boy said that there is no issue and stay away and in case anyone comes under the tractor then let it remain under the tractor; he further asked that the old man should be kept away". Thereafter, they crushed my father Gurcharan Singh with above tractor; I immediately pulled out the rod of tractor but the tractor did not stop and the tractor was taken away by the accused persons. I and Gurpreet Singh son of Gurbaksh Singh chased them and they also removed machines of Harvinder Singh and two tractor/trollys from the spot. Then I took my father at Civil Hospital Derabassi with the help of Gurpreet Singh and Harjit Singh sons of Sadhu Singh but my father expired on the way. Doctor declared my father already dead and admitted him in the dead house. The statement is correct.

The investigation was carried out, and on 18.02.2023, Jaswinder Singh @ Kala was arrested, and thereafter, on his disclosure statement, the name of the present petitioner was arrayed as an accused.

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) Petitioner has been falsely implicated in the present case.*
- (ii) Though the present petitioner is stated to be present at the spot, however, no overt act has been attributed to him.*
- (iii) Therefore, the petitioner is sharing common intention, is a matter of trial, which needs to be proved by the prosecution, by leading evidence in this regard.*
- (iv) Co-accused Harwinder Singh @ Guggu, was also present at the spot and no specific act has been attributed to him, and he has been enlarged on regular bail, by the Co-ordinate Bench of this Court, vide order dated 30.11.2023, in CRM-M-49938-2023.*
- (v) Petitioner has undergone incarceration of about 11 months;*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. This Court at the time of issuing notice of motion, had directed the learned State counsel to place on record the specific status report, detailing therein, the role of the petitioner in the crime, as well as the material on the basis of which the petitioner was nominated in this case.

The said status report was filed on 17.11.2023, before this Court, and the role of the petitioner is described as under:-

"That it is submitted that role of the petitioner as per the statement of Jaswinder Singh @ Kala son of Chajju Singh is that, on the night of 16.02.2023 when his tractor trolley was stopped by some people at village Badana, then he called his friend Gurjeet Singh @Jeeta on the spot for help. That Gurjeet Singh @ Jeeta came on motorcycle Bajaj Platina with Husanpreet Singh (Present Petitioner) and on their repeated asking also, when Gurcharan Singh and his accomplice did not let him take the trolley from the spot, then Gurjeet Singh @ Jeeta in anger drove the loaded trolley, because of which Gurcharan Singh who was standing in front of the tractor

trolley, got ran over by trolley and died. That thereafter, on the basis of the statement Gurjeet Singh @ Jeeta and Husanpreet Singh (present petitioner) were nominated as accused in FIR No. 06 (Supra).

That it is further submitted that present petitioner had a common intention to commit the offence of mining and in that incident, they also have a common intention to kill Gurcharan Singh, who was standing in front of the tractor trolley."

The perusal of the FIR, and the crux of the investigation as disclosed in the status report, clearly depicts that it was in fact Gurjeet Singh @ Jeeta, who in anger drove the loaded trolley, because of which Gurcharan Singh, who was standing in front of the tractor trolley, got ran over by the trolley, and subsequently, he died. Though, the petitioner came on the spot with the main accused, however, no overt act has been attributed to the present petitioner.

The learned State counsel has placed on record the custody certificate issued by the Additional Superintendent of Central Jail, District Patiala. The same is taken on record.

Learned State counsel on instructions, imparted to him by HC Malkoor Singh, submits that a total of 20 witnesses have been cited by the prosecution in the final report, and the conclusion of trial will take long time. Learned State counsel further submits that the petitioner is not involved in any other criminal case, and the petitioner has suffered incarceration of about 10 months and 29 days, as of today.

ANALYSIS

5. *“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.

6. 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.

7. 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 [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] 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 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.”

8. 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.

9. 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.

10. The reason for forming the above inference emanates from the factum that:- (i) as per custody certificate (supra), the petitioner is not involved in any other case; (ii) No overt act has been attributed to the present petitioner; (iii) Charges are yet to be framed against the present petitioner, and no fruitful purpose would be served by keeping the petitioner behind the bars, who has undergone actual custody of approx. 11 months; (vi) trial is not likely to conclude anytime soon.

FINAL ORDER

11. This Court has examined the order passed by the Co-ordinate Bench of this Court, vide order dated 30.11.2023, in CRM-M-49938-2023, however, in that case the co-accused was granted benefit of regular bail on account of the fact that his presence at the spot was doubtful. Therefore, the petitioner cannot claim parity with Co-accused Harwinder Singh @ Guggu. However, considering the fact that no overt act has been attributed to the petitioner, and he has suffered incarceration of about 10 months and 29 days, and charges are yet to be framed. Considering the antecedents, the incarceration period, and the role of the present petitioner, 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.

12. 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.
13. All pending application(s) stand disposed of accordingly.

16.01.2024
amandeep

(KULDEEP TIWARI)
JUDGE

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