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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : July 09, 2024

YADWINDER SINGH ALIAS LUDAN

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Parminder Singh Sekhon, 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. 388 dated 09.08.2023, under Sections 307, 379-B, 411, 473, 34, 120-B of the IPC and under Section 25 of the Arms Act, 1959, registered at Police Station City Barnala, District Barnala.

ALLEGATIONS AGAINST THE PETITIONER

2. The present FIR has been registered on a secret information against the present petitioner, and three other co-accused. The gist of the allegations as summed up by the learned trial Court concerned while declining the relief of regular bail reads as under:-



"As per case of prosecution, when on 09.08.2023. police party headed by Inspector Baljit Singh has laid barricade near the over-bridge on Sangrur side near Handiaya, where police party of ASI Kulwinder Singh also came present and they were talking about the gangsters. It was at about 02.30 pm, he received secret information that 4 gangsters related to Bambiha Gang are coming from Tapa towards Sangrur side in car no.PB- 22X-5258 and they are having illegal weapons. On this information, police party was put on alert and in the meantime, one swift car came at high speed from opposite side and the persons started firing towards police party. Inspector Baljit Singh stopped the vehicle by firing on front tyre of the said car. The person sitting on conductor side on front seat alighted from the vehicle and fired towards police party, which crossed from the pent of the Inspector Baljit Singh. After giving warning to the accused, they were apprehended on the spot. On search of accused, Yadwinder Singh, 0.32 bore pistol was recovered and on search of Sukhwinder Khan, one pistol 0.30 bore was recovered. Similarly, one 0.30 bore pistol was recovered from the possession of Husanpreet Singh. One key of the vehicle alongwith one magazine of 0.30 bore was recovered from accused Jagsir Singh. The case property was taken into police possession and all the accused were arrested on the spot."

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. Learned counsel for the petitioner submits that there is no legal evidence except the secret information, that the petitioner is a member of Bambiha gang. He further submits that it is a case of no



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injury, and just to exaggerate the offence, the police has shown that there was an exchange of gun shots and recovery of pistol has been implanted upon the petitioner. He further submits that the present petitioner is co-pedestal with co-accused, who have already been granted bail by this Court vide Annexures P-2 and P-3 respectively.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. On the other hand, learned State counsel submits that petitioner is a habitual offender, and he is involved in two more cases. He has placed on record a custody certificate qua the petitioner, which is taken on record. A perusal of custody certificate reveals that the petitioner is involved in two more cases. It further reveals that the petitioner has suffered incarceration of 10 months and 22 days as on today.

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)***



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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.

7. 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.

8. 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."

9. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled and legal principle(s) of

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law and is of the considered opinion that the instant petition is amenable for being allowed.

FINAL ORDER

10. Considering the fact that prima facie except the secret information there is no other evidence as on today, with the investigating agency to relate the petitioner with alleged **notorious gang**, as well as the fact that it is a no injury case, and the petitioner has suffered incarceration of about 10 months and 22 days as on today and the fact that the co-accused have already been granted by this Court, 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.

11. However, it is clarified that in future, if 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.

12. 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.

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(KULDEEP TIWARI)
JUDGE

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