

2024:PHHC:094622



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

232

CRM-M-34297-2024

Date of Decision :July 25, 2024

KAMAL AND ANOTHER

.....Petitioners

VERSUS

STATE OF HARYANA

.....Respondent

CRM-M-34564-2024

NARENDER

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Ran Vijay Singh, Advocate,
for the petitioners.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. Since both the petitions are arising out of the same FIR,
therefore, being amenable for common decision, are taken up together.

2. Through the instant petitions, the petitioners crave for
indulgence of this Court for his being enlarged on regular bail, in case
FIR No.393, dated 28.11.2023, under Sections 147, 148, 149, 285, 323,
427, 435, 447, 506 of the IPC, and under Section 25 of the Arms Act,

(Section 307 and 325 IPC added and Section 285 deleted later on)
registered at Police Station Kasola, District Rewari.

ALLEGATIONS AGAINST THE PETITIONERS

3. In the instant matter, the prosecution agency was set into motion on a complaint made by one Rajbir on 28.11.2023. The relevant extract of the FIR, reads as under:-

“To Mr. SHO Saheb Police Station Kasola District Rewari is requested that I Rajbir Singh, son of Shankar Singh, resident of village Iwana, Police Station Kasola District Rewari, I am a permanent resident of village Iwana and live with my family in a house built in my fields behind Gurutech Company in village Iwana. On 26.11.2023, he along with family members was at home. His sister-in-law (Bhabhi) had come. His brother Ranjeet with his family had also constructed houses in the fields. At about 01:00 PM, in the noon, 10-15 vehicles including one JCB, one tractor and several bikes were brought by 80-90 persons and stopped on the road. All persons armed with lathi danda and weapons forcibly entered the fields and started plying tractor and JCB. They made noise. His family members came to the fields. Jasrath, Malkhan, Ranjeet, Bhupender, Prem Singh, Ajay Singh, Narayan and Bhagirath came in fields. In the meantime, Rakesh Chugh and Rakesh Kumar were with those persons. They stated that they should hurry up. Meanwhile, Rakesh Chugh and Rakesh Kumar and the persons assaulted them with lathi-danda and stones A and they ran towards their houses. The persons who came with Rakesh Chugh and Rakesh Kumar fired on them. Sajjan Yadav with intention to kill him fired a shot towards him and he had narrow escape. Other 3-4 persons were also armed with weapons fired towards him. The persons who had come with Rakesh Chugh and Rakesh Kumar forcibly entered their houses. Rakesh Chugh and Rakesh Kumar asked that they had to vacate houses and land. All the persons inflicted various blows of lathi danda, stones and hurled abuses. Rakesh Kumar started misbehaving with his Bhabhi and pressed her under the feet and knee. Her chest was pressed. Rakesh Chugh and Rakesh Kumar asked others to demolish and put fire to the houses. They had put fire tractor No.HR-36AG-7596 of his nephew on fire. The persons broke windowpanes of the houses and vehicles of our neighbors. After that these people ran away and threatened to vacate the farm and house or else they will kill them. Some People started running towards the vehicles and on the spot, Sajjan Yadav Qutubpur Rewari was carrying a gun in his hand and three or four other persons were also carrying weapons and were firing while running away, people who had come to fight on our fields and houses out of them some persons namely Vicky Vairawas, Sandeep alias Pitar Shahbazzpur, Dinesh Shahbazzpur, Rohit Shahbazzpur, Amit Lalpur was known by my son Himmat. And there were 3-4 other men who had weapons, but I don't know their names. Some people also had white inflammable substances with them and I don't know the other 80-85 people. While leaving, they started threatening us to vacate this land, farm and house, and told us to run

away as this land is ours, we will eliminate you before the court's decision and this is just a trailer. These people brought with them vehicle number HR36AJ3669 SWIFT HR36AN8081 FORTUNER, a Sonalika tractor, a Mahindra tractor and a JCB, which they left behind and ran away, and ran away with other tractors, vehicles and bikes. During this time, I got serious injury on my left leg and rib and other members of my family Jasrath Singh son of Shankar Singh, Malkhan son of Shankar Singh, Ranjit son of Shankar Singh, Bhupendra, Prem Singh, Ajay Singh, Narayan, Bhagirath and Meena Devi wife LT. Babulal has also suffered serious injuries, and only they can tell about their injuries. My family members had also informed about the incidence to police by calling 112. I will give you some video footage of this incident later. You are requested to inform Rakesh Chug S/o Bodhraj Mohalla Banjarwada Rewari resident of Mohalla Banjarwada Rewari, Rakesh Kumar S/o, who had quarrel with me and my family Dayanand resident of village Kumbhawas Rewari, Sajjan Yadav resident of Qutubpur Rewari, Vicky Vairyawas, Sandeep alias Pitar Shahbazpur, Dinesh Shahbazpur, Rohit Shahbazpur, Amit Lalpur along with Jarwan who came along with Dhani, I can identify the above mentioned persons. 80- 85 persons should be searched and legal action should be taken against them. SD RAJBIR SINGH son of Shankar Singh resident of Dabana police station Kasola district Rewari 9467784641 applicants Jasrath Singh son of Shankar Singh, Malkhan son of Shankar Singh, Ranjit son of Shankar Singh Bhupendra, Prem Singh, Ajay Singh, Narayan, Bhagirath, Meena Devi wife Babulal resident village Dawana Police station Kasaula.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

4. In asking for the relief (*supra*), all the learned counsel for the petitioner, made a collective submissions to the extent that the main accused-Rakesh Chugh and Rakesh Kumar, who are the beneficiary of the act, has now been extended the relief of anticipatory bail by the Hon'ble Supreme Court, vide order dated 22.04.2024, passed in SLP (Crl.) No.2355 of 2024.

5. He further submits that no specific injury is attributed to the present petitioners.

6. He in addition submits that the petitioners, were arrested on dated 25.12.2023, and since then they all are behind bars.

7. He further submits that the investigation has already been concluded, and the final report has been filed by the prosecution *qua* the

petitioners and the charges have been framed on dated 25.04.2024.

8. He over and above submits that the petitioners seek parity with co-accused-Vikram, Rohit and Sanjay, who have been granted bail by this Court vide order dated 05.07.2024 (Annexure P-6).

SUBMISSIONS OF THE LEARNED STATE COUNSEL

9. *Per contra*, the learned State counsel vociferously opposes the asked for relief of grant of regular bail to the petitioner, and in fact all the petitioners acted as a henchmen to the main accused Rakesh Chugh and Rakesh Kumar.

10. Learned State counsel tried to make out a difference to the role of co-accused, Rakesh Chugh and Rakesh Kumar, and submits that since both of them were not present on the spot, and because of the same reason they were extended the benefit of anticipatory bail, whereas, the present petitioners were very much present on the spot, and caused injuries to as many as 10 persons, while attempting to take illegal possession of the land, not only this, they have also committed mischief by setting fire at the place of occurrence.

11. Learned State counsel, on instructions imparted to him by the police official concerned, informs this Court that the charges have been framed by the learned trial court concerned, on dated 25.04.2024, and the prosecution has cited total 23 witnesses in the final report, and none of them have been examined so far.

ANALYSIS

12. 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.

13. *“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.

14. 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.

15. 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.

XX

XX

XX

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."

16. 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."*

FINAL ORDER

17. Considering the fact that the co-accused-Vikram, Rohit and Sanjay, who are on equal footing, have been granted the concession of regular bail by this Court vide order dated 05.07.2024 (Annexure P-6), and the petitioners have suffered sufficient incarceration as they are in custody since 25.12.2023, and the charges have been framed on 25.04.2024 but none of the prosecution witnesses have been examined till date, therefore, the conclusion of the trial would take a long time, this Court deems it fit and appropriate to grant the concession of regular bail

to the petitioner, during the pendency of trial. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioners are ordered to be released on bail, on furnishing of their respective bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

18. However, it is clarified that if in future, the petitioners are 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 petitions only.

A photocopy of this order be placed on the files of the connected cases.

July 25, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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