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2024:PHHC:098881



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-35859-2024

Date of Decision : **August 02, 2024**

GURJOT SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. G.K.Mann, Senior Advocate with
Mr. Anmol Jeevan Singh Gill, Advocate
for the petitioner.

Mr.Pardeep Bajaj, DAG, 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.0002, dated 12.01.2024, under Sections 307, 323, 341, 427 and 34 of the IPC and under Sections 25, 27, 54 and 59 of the Arms Act, 1959, registered at Police Station Ramdas, District Amritsar Rural.

ALLEGATIONS AGAINST THE PETITIONER

2. One Head Constable Rajinder Singh, who is an injured/victim, made a statement which laid the bedrock for prosecution to register the instant FIR. The contents of the FIR reads as under:-

“Statement of Head Constable Rajinder Singh, No. 249 ASR- R alias Happy son of Late Hardev Singh resident of Thoba Police station Ramdas, District Amritsar, aged about 37 years, Mobile No. 98140-44831, stated that I am resident of above mentioned address and I am performing my duty in department of Punjab Police at Police post

Baba Bakala. Police station Beas, District Amritsar Rural. On 09.01.2024. at about 5:00 pm, I was coming towards my village Thoba from my duty place in my car bearing registration no. PB02-CJ-5386, mark Swift Desire of white colour and when I reached near the village Anaitpura Bagh then I called ASI Kuldeep Singh, posted at Police post Chamiyari, Police station Ajnala, and informed him that we both are on duty at the Maghi fair at Sri Muktsar Sahib and he told me to send him the list of duty and I slowed down my car and started sending him the list of duty. At that time, one car mark Polo of white colour without number plate came from behind my car from Ajnala side, and they stopped their car in front of my car. Out of which, three clean shaven persons and one Sikh person alighted and one of them was having datar. another person was having iron toka and the third was having 32 bore pistol and sikh person who was driver was empty handed and driver Sikh person right after getting out of his car said that he may not be spared today, after hearing this, rest of assailants attacked and broke the car windows with their respective weapons and they dragged me out of the car and gave me beatings. The person who holding the pistol, pointed his pistol towards me and fired shot towards me with an intention to kill me, which hit on my little finger of left hand. I raised a noise "Mar-ditta Mar-Ditta" then all the assailants with their respective weapons ran away from the spot in their car towards G.T. Road Gaggomahal. Due to many injuries, I got my treatment from private Hospital Baba Deep Singh Ajnala. Being a police officer, I have been looking for the said persons till date, who could not be found. Today I along with Sukhwant Singh son of Sh. Dilbagh Singh resident of Dhangai Police station Ramdas, came to inform you, you met us, appropriate strict action be taken against unidentified persons. I be given justice. Statement has been recorded, heard and is correct. Sd/- Rajinder Singh 249 R, Head Constable Rajinder Singh No. 249 ASR-R, verified by Sd/- Sukhwant Singh 97819-47480, attested by Sukhjot Singh ASI/ IC PP Police post Gaggomahal, Police station Ramdas, dated 12.1.2024."

3. What surfaced from the perusal of the instant FIR is that, no one has been named in the FIR, in fact, it has been registered against some unknown persons. During investigation, on dated 17.03.2024, DDR No.19 was registered, wherein Nishan Singh, Gurjot Singh (present petitioner) Gurjit Singh and Simranjit Singh, were nominated as an accused in the instant FIR. Consequently, on dated 20.03.2024, Nishan Singh and present petitioner-Gurjot Singh, were arrested and both were got identified from the complainant, i.e. HC Rajinder Singh.

4. As per the prosecution case, present petitioner (Gurjot Singh) got recovered one iron *dater*, which according to the prosecution was

used in the commission of crime. It further reflects from the record that out of total 4 accused named in the investigation, three have already been arrested, except one Simranjit Singh.

5. It is a positive case of the prosecution that the HC Rajinder Singh, complainant, has suffered a gunshot injury on little finger of his left hand.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

6. In asking for the relief (*supra*), learned senior counsel for the petitioner submits that the instant FIR, was registered initially against some unknown persons, that too after delay of two days, of the alleged occurrence. Therefore, there is a considerable delay in lodging the FIR, as the date of occurrence is on dated 09.01.2024, whereas, instant FIR has been lodged on 12.01.2024.

7. She further submits that the petitioner was arrayed as an accused in the instant FIR on 17.03.2024, i.e. after the delay of more than two months.

8. She also submits that the petitioner is behind the bars since 20.03.2024, and the challan has been presented, whereas, the charges are yet to be framed.

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, on the ground that the accused persons have audacity to attack upon the police official, who was on duty.

10. He further submits that the victim (HC Rajinder Singh)

suffered a gunshot injury on his little finger, therefore, the petitioner is entitled to relief (*supra*).

11. He has placed on record a custody certificate *qua* the petitioner, which reflects that the petitioner has suffered incarceration of 4 months and 6 days as on today, and he is not involved in any other criminal case.

12. He further submits, on instructions from ASI Avtar Singh, that the challan has been present in the instant case however, charges are yet to be framed.

ANALYSIS

13. 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.

14. “*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.

15. 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.

16. 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."

17. 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

18. Be that as it may, this Court is of the considered view that further incarceration of the petitioner is not warranted in the instant matter and he deserves to be released on regular bail, for the reasons assigned hereinbelow:-

- i. There is a considerable delay in the registration of instant FIR;
- ii. the petitioner is not named in the FIR;
- iii. no specific injury is attributed to the present petitioner in the FIR;
- iv. the petitioner has suffered incarceration of 4 months and 6 days on today;
- v. the veracity of the allegation is yet to be established by the prosecution by leading cogent evidence before the trial court concerned;
- vi. the petitioner has clean antecedents; and,
- vii. finally, the trial is yet to begin, therefore, conclusion of the trial would take long time.

Consequently, 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 his bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

19. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as is 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.

August 02, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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