



CRM-M-35393-2024 (O&M)

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

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CRM-M-35393-2024 (O&M)
Date of Decision : November 21, 2024

KAMAL KISHORE

-PETITIONER

V/S

STATE OF PUNJAB

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Shiv Charan Bhola, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

Mr. B.S. Randhawa, Advocate
for the complainant.

KULDEEP TIWARI, J. (ORAL)**CRM-43695-2024**

1. As prayed for, the instant application is **allowed**. Copy of the testimony of PW7 Nishu is taken on record as Annexure P-4.

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2. Through the instant petition cast under Section 439 of the Cr.P.C., the petitioner craves for him being enlarged on regular bail, in case FIR No.148 dated 28.10.2022, under Section 302 of the IPC, registered at P.S. Nangal, District Rupnagar.

GIST OF THE FIR AND INVESTIGATION

3. The genesis of the present FIR is embodied in the statement made by one Harjit Kaur (hereinafter referred to as the 'complainant'). The death of the complainant's husband Shadi Lal (hereinafter referred to as the



‘deceased’) has constituted the bedrock for registration of the present FIR. Succinctly stated, the present FIR embodies allegations that the petitioner, in connivance with his co-accused, committed murder of the deceased.

4. The relevant extract of the present FIR, as narrated in the status report dated 28.09.2024, is reproduced hereunder:-

“....complainant- Harjit Kaur (wife of deceased) met the investigating officer and got recorded her statement averring therein that on 25.10.2022 at about 07:30 PM, her husband Shadi Lal left the house by telling her that he had to go with petitioner- Kamal Kishore and after about half an hour he returned to the house and he told the complainant- Harjit Kaur that they had come after paying obeisance at village Bhallri and thereafter, Shadi Lal again left the house and at about 09:30/10:00 PM, Shadi Lal was brought by Ajay Kumar and Chander Shekhar to the house and they told the complainant- Harjit Kaur that he was drunken and was lying at the outskirts of the village and her husband- Shadi Lal had injuries on his face and there was swelling at the backside of his head. It was further averred by the complainant- Harjit Kaur that her husband- Shadi Lal did not regain senses till 03:30 AM, and then doctor was called in the house, who after checking told that the deceased- Shadi Lal had an internal head injury and the doctor advised to take the him to the hospital, accordingly, the injured- Shadi Lal was rushed to Civil Hospital, Nangal. It is further averred by the complainant- Harjit Kaur that at Civil Hospital, Nangal, CT Scan of her husband- Shadi Lal was carried out by the doctors and after checking the same, the doctors asked her to take the injured- Shadi Lal to PGI Chandigarh and they rushed him to PGI Chandigarh, where Shadi Lal died in the morning of 27.10.2022. It was concluded by the complainant- Harjit Kaur that her husband had gone with petitioner- Kamal Kishore and she suspected that Kamal Kishore and some other persons have killed her husband and she requested to verify the causes of death of her husband- Shadi Lal and to take action against the concerned.”

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5. During the course of investigation, statements of witnesses, including an eyewitness Nishu, under Section 161 Cr.P.C. were recorded. The testimony of said eyewitness Nishu, as recorded before the learned trial Court when she stepped in the witness box as PW7, is reproduced hereunder:-

“Stated that my husband is working in BBMB Nangal. On 25.10.2022, there was Vishwakarma day however, my husband had attended the office on that day and due to Vishwakarma day I had gone to light the earthen pot (Diyas) at my old house in the village Kulgram and it was about 09/09.15PM while I was on the way to my old house then I saw that Ajay Kumar S/o Ram Pal, Kamal Kishore S/o Malkiat Singh and Shadi Lal S/o Gareeb Dass were fighting with each other near the shops of Ajay Kumar and the lights of the shops were on. In the meantime, Kamal Kishore caught hold the arms of Shadi Lal and Ajay Kumar gave a brick bat blow by picking up the same from the spot, on the head of Shadi Lal due to which he fell down on the road. Thereafter, Kamal Kishore and Ajay Kumar took Shadi Lal who became unconscious at the spot, to his house and since I was in hurry I went to light the diyas in the house and later on I came to know that Shadi Lal died at PGI Chandigarh due to injuries caused to him by Ajay Kumar and Kamal Kishore. I could not inform the family of Shadi Lal as accused Kamal Kishore and Ajay Kumar themselves took Shadi Lal to his house. My statement in this regard was recorded by the police. I identify the accused persons present in the court today through VC.”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

6. The learned counsel for the petitioner submits that, the petitioner has not committed any offence, rather he has been falsely implicated in the present case. Nonetheless, he submits that, even if for the sake of arguments, the testimony of PW7 Nishu, who is otherwise a witness

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procured by the investigating agency just to fill up the lacuna in prosecution case, is taken to be a gospel truth, yet the only allegation against the petitioner is that, he caught hold the deceased, but, there is no allegation that he caused any injury, much less fatal to the deceased.

7. The learned counsel for the petitioner further submits that, since there is no likelihood of the trial concluding anytime soon, inasmuch as, only seven prosecution witnesses, out of total seventeen witnesses, have been examined so far, therefore, no useful purpose would be served by keeping the petitioner behind the bars, who has already suffered incarceration of approx. 02 years and 1 month and has clean antecedents.

**SUBMISSIONS OF THE LEARNED STATE COUNSEL, AND,
LEARNED COUNSEL FOR THE COMPLAINANT**

8. *Per contra*, the learned State counsel, who is assisted by the learned counsel for the complainant, has opposed the grant of regular bail to the petitioner, on the ground that, the petitioner has been specifically named in the FIR with the serious allegations that, he along with his co-accused committed murder of the deceased.

9. The learned State counsel has also filed the custody certificate of the petitioner, which is taken on record. Moreover, on instructions imparted to him by A.S.I. Tejinder Singh, he has verified that, only seven prosecution witnesses, out of total seventeen witnesses, have been examined so far.

ANALYSIS

10. 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.

11. *“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 Baliy”, 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.

12. 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.

13. 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."

14. 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

15. Be that as it may, taking into account the fact that: (i) the probative value of the sole eyewitness Nishu's testimony is yet to be evaluated by the learned trial Court during the course of trial; (ii) the petitioner has, as per custody certificate, suffered incarceration of approx. 02 years and 20 days, and, he has clean antecedents; (iii) the trial is not likely to conclude anytime soon inasmuch as only seven prosecution witnesses, out of total seventeen witnesses, 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.

16. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

November 21, 2024
devinder

(KULDEEP TIWARI)
JUDGE

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