

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-M-38547-2023 (O&M)

Date of Decision : February 01, 2024

VIKAS ALIAS SANJU

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Robin Singh Hooda, Advocate,
for the petitioner.

Mr.Abhinash Jain, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

CRM-37107-2023

The application is allowed as prayed subject to all just exceptions and FLS report is taken on record as Annexure P-3.

CRM-M-38547-2023

1. Through the instant second petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No. 44 dated 10.02.2021, under Sections 302, 201 and 34 of the IPC, (with Sections 506, 404, 328 and 120-B IPC, added later on), registered at Police Station IMT, District Rohtak.

ALLEGATIONS AGAINST THE PETITIONER

2. The case of the prosecution was set up on a statement made by the father of deceased-Sandeep alleging therein, that his son was having a Maruti van in which he used to supply the milk, which he used

to park outside his room where he used to sleep and it was the daily routine of deceased, that at about 4:00 a.m. he regularly used to starts the van, and then go to washroom. On the fateful day, father of the deceased-Sandeep, did not hear the sound of van in any manner, and later that day, it was informed to him that the van is burning at Rurkee road, and when the complainant reached at the spot, he saw that it was his son's van, and his son was also burnt wit the van. The shoes and slippers, which the deceased-Sandeep, used to wear were found at home. The complainant raised suspicion that wife of deceased-Sandeep, namely-Murti Devi, who earlier also tried to kill Sandeep, is involved in the killing of deceased Sandeep, with the help of other persons.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIOER

3. Learned counsel for the petitioner submits, that earlier petition filed by the petitioner seeking the same relief of regular was dismissed as withdrawn, vide order dated 23.02.2023. Despite lapse of more than one year of withdrawal of the aforesaid earlier bail application, the trial is progressing with a snail pace, as only 7 prosecution witnesses have been examined out of the total 31 cited by the prosecution. Therefore, he has filed the instant second regular bail application.

4. Learned counsel for the petitioner submits that the present petitioner, has not been named in the FIR, and he has been implicated in the instant FIR, on the disclosure statement of Murti Devi, wherein, the petitioner is alleged to be her paramour.

5. He further submits that the detailed investigation was carried by the investigating officer, however, there is no relevant incriminating material available on record which can connect the present petitioner with the commission of crime.

6. He further submits that the chain of circumstances, which were produced by the prosecution before the learned trial Court concerned, does not connect the present petitioner with the alleged crime and the recovery which was effected from the present petitioner, is doubtful and in fact it is a planted recovery, therefore, it cannot be relied upon.

7. He further submits that the petitioner has already suffered incarceration of about 3 years and out of the total 31 prosecution witnesses only 7 have been examined so far, therefore, the conclusion of trial will take long time.

8. Learned counsel for the petitioner has placed on record the orders passed by the co-ordinate Benches of this Court, whereby, the relief of regular bail has already been extended to accused Murti Devi, one of the main accused whose name is in the FIR (vide order dated 13.12.2023 in CRM-M-48892-2023), and other two co-accused, Geeta and Manish (vide order dated 31.08.2023 in CRM-M-41976-2023 and vide order dated 29.11.2022 in CRM-M-9466-2022, respectively). The same are taken on record.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

9. *Per contra*, the learned State counsel vociferously opposed the asked for relief on the ground that as per the reply filed by the State,

the recovery which was effected from the present petitioner, is of a ring, mobile phone, Aadhar Card belonging to the deceased-Sandeep, and it establishes the link the chain of the circumstantial evidence. Therefore, the petitioner does not deserve the concession of regular bail.

10. Learned State counsel has placed on record a custody certificate *qua* the petitioner, which is taken on record, and perusal of the same reveals that the petitioner has suffered incarceration of 2 years, 11 months and 8 days as on today.

11. He further informs this Court, on instructions imparted to him from SI Satish, that the final report in the instant FIR has already been filed way back on dated 12.05.2021, and thereupon, the learned trial Court concerned has framed charges on dated 28.07.2023, and out of the total 31 prosecution witnesses, only 07 have been examined so far.

ANALYSIS

12. This Court has heard the learned counsel for both the parties concerned, and has gone through the entire case file as also the reply filed by the State and the orders passed by the co-ordinate Benches of this Court whereby the benefit of regular bail has been accorded to all three co-accused.

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 “***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 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.”

16. 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.

17. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

FINAL ORDER

18. Considering the fact that the instant case is based upon circumstantial evidence, the petitioner has suffered incarceration of 02 years 11 months and 08 days as on today, the trial is at initial stage, as out of the total 31 prosecution witnesses only 07 have been examined so far, and, further the petitioner has clean antecedents, coupled with the fact that three co-accused who are on similar footings have been extended the relief of regular bail by co-ordinate Benches of this Court, this Court deems it 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 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.

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

February 01, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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