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

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Date of Decision : December 04, 2024

JAGPREET SINGH ALIAS JAJ**-PETITIONER****V/S****STATE OF PUNJAB****-RESPONDENT****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Navinder Jit Singh Dandiwal, Advocate
for the petitioner.

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

KULDEEP TIWARI, J. (ORAL)

1. Through this petition cast under Section 483 of the B.N.S.S., the petitioner craves for him being enlarged on regular bail, in case FIR No.121 dated 21.06.2022, under Sections 302/34 of the IPC, registered at P.S. Ajnala, District Amritsar Rural.

GIST OF THE FIR AND INVESTIGATION

2. The genesis of the present FIR is embodied in the statement made by one Gursharan Singh (hereinafter referred to as the 'complainant').

The statement of the complainant can be summarized as under:-

* On 19.06.2022, at about 02:00 p.m., complainant's brother Harcharan Singh (hereinafter referred to as the 'deceased'), without informing the complainant, went to Ajnala with the petitioner on his motorcycle, however, he did not return home till 07:00 p.m.;

* Since the mobile of the deceased became switched off,

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therefore, the complainant inquired about him from the petitioner, whereupon, the petitioner told that he had dropped the deceased at Ajnala Chowk and thereafter, the latter took lift in a white car and went somewhere;

* A missing complaint of the deceased was lodged by the complainant at Police Station Ajnala on 20.06.2022;

* On 21.06.2022, at about 08:00 a.m., the complainant received a call from his cousin Sarabjit Singh, who informed that, on 20.06.2022, at about 03:00 p.m., he saw the deceased standing near Sakki Bridge, Ajnala;

* Later, the complainant came to know that deceased's dead body was lying on the track of Sakki Nala (Drain);

* Complainant alleged murder of deceased by some known persons.

3. Consequent upon registration of the present FIR, investigation commenced and post mortem of the dead body was got conducted. As per the Post Mortem Report, the deceased suffered as many as 16 injuries.

4. On 22.06.2022, the complainant suffered a supplementary statement to the effect that, owing to grief and shock of his brother's death, he had, in his initial statement, mistakenly mentioned the date as 20.06.2022 regarding the receipt of telephonic call from his cousin Sarabjit Singh, whereas, the correct date of receipt of telephonic call (supra) was 19.06.2022.

5. During the course of investigation, the statement of one Tarsem Singh was recorded to the effect that, on 19.06.2022, at about 03/03:30 p.m., while he was going from Ajnala to Village Saran on the track of the canal, he saw the petitioner and one Harjinder Singh giving beatings to the deceased. Moreover, they were also shouting loudly to kill the deceased and

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when the deceased got unconscious, both the accused (supra) injected an injection in the arm of the deceased. He claimed himself to be an eyewitness of the whole incident.

6. Thereafter, on 24.06.2022, statement of Charanjit Singh (Ex. Sarpanch) was also recorded to the effect that, the petitioner and Harjinder Singh made extrajudicial confession before him regarding their acts resulting in the death of the deceased.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

7. 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. To substantiate this claim, he submits that prosecution's most crucial witnesses Tarsem Singh and Charanjit Singh are introduced witnesses, inasmuch as, (i) Tarsem Singh is the close relative of the complainant, therefore, he has been introduced to falsely implicate the petitioner; and (ii) Charanjit Singh is not known or acquainted to the petitioner, hence there arose no occasion for the petitioner to make any extrajudicial confession before him and as such, his statement is surrounded by clouds of suspicion.

8. The learned counsel for the petitioner also claims parity with co-accused Harjinder Singh, who has already been extended the relief of regular bail by the Co-ordinate Bench of this Court, through drawing the order dated 11.01.2024 (Annexure P-6).

9. Concluding his arguments, the learned counsel for the

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petitioner submits that, since there is no likelihood of the trial concluding anytime soon, inasmuch as, only 03 prosecution witnesses, out of total 23 witnesses, have been examined so far, therefore, no useful purpose would be served by keeping the petitioner behind the bars, who has been languishing therein since 28.06.2022 and has clean antecedents.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. *Per contra*, the learned State counsel has opposed the grant of regular bail to the petitioner, on the ground that, the petitioner is the main accused in committing murder of the deceased. He further submits that, from the allegations itself, there is last seen evidence against the petitioner and motive is also assigned to him, whereas, no motive is assigned to his co-accused Harjinder Singh.

11. Furthermore, on instructions imparted to him by A.S.I. Kamaljeet Singh, the learned State counsel has verified that, only 03 prosecution witnesses, out of total 23 witnesses, have been examined so far. Also, he does not dispute the period of incarceration suffered by the petitioner and his clean antecedents.

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,



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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.

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.

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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



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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

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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. Be that as it may, taking into account the fact that: (i) the petitioner has, as per the custody certificate placed on record today by the learned State counsel, suffered incarceration of 02 years, 05 months and 05 days and has no criminal antecedents; (ii) the snail pace of trial and there being no likelihood of its becoming concluded anytime soon, inasmuch as, only 03 prosecution witnesses, out of total 23 witnesses, have been examined so far; (iii) petitioner's co-accused Harjinder Singh, again whom similar allegations are levelled, has already been granted regular bail by the Co-ordinate Bench of this Court; (iv) the probative value of statements made by eyewitness(es) and witness of extrajudicial confession is yet to be ascertained by the learned trial Court; this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without



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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.

18. 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.

December 04, 2024
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(KULDEEP TIWARI)
JUDGE

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