

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

CRA-S-2239-2023 (O&M)
Date of Decision : January 18, 2024

SHAHNAWAJ -APPELLANT

V/S

STATE OF HARYANA -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ashok Giri, Advocate
for the appellant.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant appeal, the appellant assails the order dated 15.02.2023, whereby, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, declined to grant the relief of regular bail to the appellant, in FIR No.164 dated 16.04.2022, under Sections 148, 149, 302, 307, 323, 506, 379-B, 120-B, 201 of the Indian Penal Code (hereinafter referred to as 'IPC'), and, Sections 25/29 of the Arms Act, and, Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act'), registered at P.S. Sector 17, HUDA, Jagadhri (Yamuna Nagar).
2. The prosecution story is rooted in the statement of one Mohit Sharma (hereinafter referred to as the 'complainant'). For ready reference, the gist of his statement, as narrated in the order (supra) of the learned Additional Sessions Judge, Hisar, is extracted hereinafter:-

"...injured Mohit Sharma got recorded his statement, inter-alia,

stating that he was salesman and on 15.4.2022, he came from Ludhiana to attend marriage of his sister at Yamuna Nagar. On 15.4.2022, he alongwith Jaanu, Bobby, Akash @ Shanu, Bittu and Rajat had proceeded from house of Jaanu at about 09:30 P.M. to attend marriage of their friend Ronak Kalra at Vintage Grill Palace, Jagadhri in car bearing No.HR02AF5000 Marka Safari and at about 12:45 A.M., they started to disperse from the marriage palace and after coming out of gate of the Vintage Grill Palace, when they were boarding the car/vehicle, then 15/20 boys, having revolver and country made pistol in their hands, came there and exhorted to kill Jaanu today and all of them started firing at them, out of those assailants, he could recognize Manoj @ Shanty, Sachin Pandit and Sumit resident of Unhedi and he could recognize others if brought before me and out of those boys, one gave a gun shot fire in his left leg, another unknown boy also fired which hit him on his left leg and one another also gave gun shot fire on his left leg and other boys raised lalkara to the effect that 'Jaanu Chude Chamar where would you go, you have earlier escaped but today we would kill you' and after encircling Jaanu, they fired at him. That thereafter, he (complainant) fell there and those boys believing him to be dead, aimed gunshots at his other companions and Rajat Kaushal also received injuries in this incidence and one another person who was being called Anmol had also received gun shot injuries and Jaanu fell at the spot and became unconscious and when persons at the marriage function raised cries, then Sachin Pandit, etc. fled from the spot by proclaiming that the persons who had escaped today would be done to death later on. Accordingly, legal action was sought against the culprits....”

3. The record, as available before this Court, makes revelations that initially a case was registered under Sections 148, 149, 323, 307, 302, 506 of the IPC, Section 25 of the Arms Act, and, Section 3 of the SC/ST Act. However, during the course of investigation, offences under Section 379-B and 120-B were also incorporated in the case.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

4. The learned counsel appearing for the appellant, in his asking for the hereinabove extracted relief, has made the following submissions:-

(i) Neither the appellant was present at the place of occurrence, nor his name surfaced in the FIR, nor any role whatsoever has been assigned to him therein;

(ii) The appellant has been arrayed as an accused, solely on the basis of disclosure statement of co-accused Manoj @ Santi;

(iii) The only allegation against the appellant, as per prosecution version, is that, he had sold the alleged weapon(s) to the main accused, who used the same in the alleged crime;

(iv) The appellant is facing trial only for commission of offence punishable under Section 29 of the Arms Act, and, he is not culpable for commission of other offences. To lend vigour to this submission, he has drawn attention of this Court towards the charge sheet (Annexure P-4). The relevant extract of charge sheet (Annexure P-4) is extracted hereinafter:-

“...Lastly, during the same date, time and place, you accused Shahnawaj supplied four countrymade pistols and one deshi katta and live cartridges to co-accused Sumit Rana, Manoj Kumar @ Shanti and Sachin Pandit (yet to be arrested) by purchasing the same from Hazi Sameem (yet to be arrested), without previously ascertaining that such persons are entitled to or not by virtue of the act or any other law for the time being in force and you accused thereby committed an offence punishable under Section 29 of the Arms Act 1959 and within the cognizance of this Court....”

- (v) *No recovery has been effected from the appellant;*
- (vi) *The appellant was arrested on 19.01.2023, whereupon, he was put behind bars and as on today, he has undergone incarceration of approx. 1 year;*
- (vii) *Investigation stands completed, whereupon, the Final Report has also been presented, however, culpability of the appellant is yet to be established by the trial Court, therefore, keeping the appellant behind bars for an indefinite period would serve no gainful purpose;*
- (viii) *Though the appellant is involved in four other criminal cases, however, he has been granted bail in three of those criminal cases;*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. *Per contra*, the learned State counsel though has opposed the grant of the asked for relief (*supra*), however, he does not dispute the factum that the appellant is facing trial only for commission of offence punishable under Section 29 of the Arms Act. Furthermore, by placing reliance upon the criminal antecedents of the appellant, as displayed in his custody certificate issued by the Deputy Superintendent, District Prison, Yamuna Nagar, he submits that since the appellant is involved in four other criminal cases, therefore, he does not deserve the concession of regular bail.

ANALYSIS

6. *“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.

7. 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.

8. 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 [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] 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 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.”

9. 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.

10. This Court has examined the instant appeal on the touchstone of the hereinabove extracted settled legal principle(s) of law. Since the appellant is evidently facing trial only for commission of offence punishable under Section 29 of the Arms Act, therefore, without going into the details of allegations, this Court is of the considered opinion that the instant appeal is amenable for being accepted.

11. The reason for forming the above inference emanates from the

factum that:- (i) neither the appellant has been nominated as an accused in the FIR, nor any specific role has been attributed to him, rather he has been nominated as accused on the basis of disclosure statement of co-accused; (ii) since the maximum sentence prescribed for commission of offence under Section 29 of the Arms Act is three years, and, the appellant has already undergone actual custody of approx. 11 months and 11 days, therefore, keeping the appellant behind bars would serve no fruitful purpose; (iii) though the appellant is involved in other criminal cases also, however, he has been granted bail in majority of those cases.

FINAL ORDER

12. As a sequel to the above discussion, this Court deems it appropriate to allow the instant appeal and to grant the concession of regular bail to the appellant, at this stage. Therefore, without commenting upon the merits and circumstances of the present case, the present appeal is **allowed**. The appellant 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 concerned.

13. However, anything observed hereinabove shall not be construed to have any bearing on the outcome of the trial, nor the learned trial Judge concerned shall be influenced by the observations made hereinabove, as this order is meant for deciding the present appeal only.

January 18, 2024
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(KULDEEP TIWARI)
JUDGE

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