

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106-1&3 (I) CRM-M-44592-2023
Date of Decision : February 14, 2024

SHUBHAM @ MAHESH -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

(II) CRM-M-48248-2023

KOMAL @ KAJAL -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Dinesh Nagar, Advocate
for the petitioner (in both petitions).

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

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petitions, the petitioners crave for indulgence of this Court for them being enlarged on regular bail, in case FIR No.152 dated 07.06.2023, under Sections 306, 506, 34 of the IPC, 1860, registered at P.S. Model Town Hoshiarpur, District Hoshiarpur.

ALLEGATIONS AGAINST THE PETITIONERS

2. The genesis of the prosecution case is embodied in a complaint made by one Manu Kumar, wherein, he alleged the present petitioners and their co-accused to be culpable for death of his brother Deepak Kumar (hereinafter referred to as 'deceased'), who had committed suicide. The gist of the allegations, as narrated in paragraph No.8 of the order dated

01.08.2023, whereby, the learned Judge, Special Court, Hoshiarpur has declined to grant regular bail to the petitioners, is extracted hereinafter:-

“8. The complainant/informant levelled allegations that marriage of his brother namely Deepak Kumar (deceased), was performed with Komal @ Kajal (bail applicant), resident of South Delhi, in the year 2018 and from their wedlock a son namely Divyansh was born. Deepak Kumar (deceased) was working as a driver on an Ambulance of Dhami Hospital, near Prabhat Chowk, Hoshiarpur. After marriage of Deepak Kumar (deceased) with Komal @ Kajal (bail applicant), there used to remain dispute between them and both the parties have filed applications against each other. Deepak Kumar (deceased) stated to have been informed complainant/informant, number of time that Komal @ Kajal (bail applicant) was having illicit relations with one boy namely Shubham @ Mahesh (bail applicant), resident of Delhi, regarding which he also informed Geeta (mother-in-law) Kamal (father-in-law)(co-accused), who told Deepak Kumar (deceased) to give divorce Komal @ Kajal (bail applicant) and they will perform her marriage with Shubham @ Mahesh (bail applicant). On 05.06.2023, Deepak Kumar (deceased) stated to have called complainant/informant that he is harassed in the hands of Komal @ Kajal, (Bail applicant), Geeta (mother-in-law), Kamal (father-in-law) (co-accused). Shubham @ Mahesh (bail applicant), stated to have called Deepak Kumar (deceased) and threatened him that he will kill him, if, he does not divorce Komal @ Kajal (bail applicant). On 06.06.2023, Deepak Kumar (deceased) again made a telephonic call to complainant/informant, that on being harassed by Komal @ Kajal, Shubham @ Mahesh (bail applicants) Kamal (father-in-law) & Geeta (mother-in-law) (co-accused), he had consumed Sulphas tablets and is under treatment in Civil Hospital, Hoshiarpur. Deepak Kumar (deceased) was also taken to PGI, Chandigarh, but ultimately he was again brought back to Civil Hospital, Hoshiarpur, where he breathe his leas.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

3. The learned counsel for the petitioners, in his asking for the hereinabove extracted relief *qua* petitioner Komal @ Kajal, has submitted that owing to a matrimonial discord, inasmuch as, persistent demands of dowry, the deceased had, on 02.03.2020, ousted his wife, i.e. petitioner Komal @ Kajal, from the matrimonial house. Accordingly, the petitioner

Komal @ Kajal had moved a complaint in P.S. Women Cell, PVR Malvia Nagar, Saket, New Delhi, whereupon, not only the deceased brought her back, but also executed one 'Mafinama', thereby admitting perpetration of domestic violence. However, even thereafter, the deceased again gave beatings to the petitioner Komal @ Kajal, which resulted in her getting admitted in Civil Hospital, Hoshiarpur, besides also resulted in an application being made on 16.09.2020 to Police Station concerned. Upon this, a compromise/Talaqnama was effected *inter se* the parties on 29.08.2022.

4. By emphasizing the date of ouster of the petitioner Komal @ Kajal from her matrimonial house, the learned counsel for the petitioners submits that when the petitioner Komal @ Kajal had, much prior to commission of suicide by the deceased, been ousted from her matrimonial house, therefore, there was no occasion for her to commit any act of abetment, which may be termed to have led the deceased to commit suicide.

5. Insofar as petitioner Shubham @ Mahesh is concerned, the learned counsel for the petitioners has submitted that he did not have any concern or connection with the matrimonial discord *inter se* the deceased and his wife. Petitioner Shubham @ Mahesh has been unnecessarily and falsely roped in the present FIR, just because he had, out of sympathy, accompanied the petitioner Komal @ Kajal and her family members to the Police Station concerned and helped them to pursue the litigation against the deceased. The allegations *qua* threats being extended by him to the deceased do not carry any truth, rather are flimsy allegations.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

6. *Per contra*, the learned State counsel has placed on record the

custody certificate of the petitioner Shubham @ Mahesh, as issued by the Superintendent, Central Jail, Gurdaspur, and, has vehemently opposed the grant of regular bail to the petitioners. He submits that the culpability of the petitioners gain vigour from the suicide note of the deceased, wherein, the deceased has levelled specific allegations against them.

7. Furthermore, on instructions imparted to him by A.S.I. Dharminder Singh, he has informed this Court that though the Final Report has already been presented on 04.09.2023, wherein, prosecution has cited total 13 witnesses, however, charges are yet to be framed against the petitioners.

ANALYSIS

8. “*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.

9. 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.

10. 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.”

11. 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.

12. Be that as it may, this Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petitions are amenable for being allowed.

13. The reason for forming the above inference emanates from the factum that:- (i) uncontestedly, the petitioners have suffered incarceration of approx. 7 months; (ii) there is no likelihood of the trial concluding anytime soon, as charges are yet to be framed, therefore, keeping the petitioner behinds the bars would serve no gainful purpose; (iii) the issue “*whether the act of the petitioners, as alleged in the FIR, tantamounts to abetment or not, and, whether thereby the rigor of Section 306 of the IPC is invited or not*” is a moot question, which is to be adjudicated by the learned trial Court concerned, after appreciation of the evidence, as to be adduced by both the parties.

FINAL ORDER

14. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioners. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioner are 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.

15. Anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petitions only.

February 14, 2024
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(KULDEEP TIWARI)
JUDGE

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