

CRM-M-46377-2023

2024:PHHC:049678

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-46377-2023

Date of Decision : April 15, 2024

GURJINDER SINGH @ HARMAN

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Usha Rani, Advocate for
Ms. Bandana Kumari Dogra, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.111 dated 8.8.2021, under Sections 302, 450, 34 IPC, registered at P.S. Sarhali, District Tarn Taran, Punjab.

2. The petitioner was earlier declared as a proclaimed offender on 12.12.2022 and thereupon, he was arrested in the instant FIR on 24.4.2023.

3. At the very outset, the learned counsel for the petitioner has placed on record the certified copy of order dated 15.12.2023, which is taken on record as Annexure A. The order (supra) passed by the learned trial Court concerned, reveals that the petitioner was discharged by the learned trial Court concerned, in case FIR No. 14 dated 24.1.2023, under Section 174-A of IPC, Police Station Sirhali, District Tarn Taran by

observing that the compliance of Section 195 Cr.P.C. has not been made.

4. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, draw the attention of this Court to the FIR to submit that no role has been assigned to the present petitioner and infact his name has been figured in the disclosure statement of main accused Karanbir Kaur d/o Dial Singh, who is infact granted the relief of default bail by the learned Magistrate concerned vide order dated 24.11.2021 (Annexure P-2). She further submits that except the disclosure statement, there is nothing on record, which can connect the present petitioner with the crime. The complainant-Harcharan Singh, while stepping into the witness box as PW1, has not supported the case of the prosecution and was declared hostile and, therefore, there is no evidence with the prosecution even to support the circumstantial evidence.

5. Before embarking upon the entitlement of the petitioner to be released on regular bail, let us first read out the FIR. The relevant extract of the FIR reads as under:-

“Statement of Harcharan Singh son of Joginder Singh, resident of Naushira Pannuan, Police Station Sirhali, age 45 years, Mobile: 98145-92450. Stated that I am resident of abovesaid address and I am labourer by profession. Amrik Kaur wife Jail Singh resident of village Naushira Pannuan is my uncle's daughter. Amrik Kaur was married with one Jail Singh son of Mahinder Singh, resident of village Dilavarpur, about 35 years back. After two years from the marriage, Amrik Kaur had started to reside at her parental home at village Naushira Pannuan, because her husband Jail Singh was serving in CISF. Amrik Kaur had been constructed her house here. Amrik Kaur had no her own child. She had adopted her Nanam's daughter [daughter of sister-in-law] Karanbir Kaur d/o Dial Singh, resident of village Vadala,

near Ram Tirath Amritsar and Karanbir Kaur was permanently residing with Amrik Kaur. About 13-14 years ago Karanbir Kaur with her own desire had got solemnized her marriage with Gagandeep Singh son of Diwan Singh, resident of village Bharowal, Police Station Goindwal Sahib. About three months back Jail Singh husband of Amrik Kaur was died. After death of Jail, Karanbir Kaur had started to visit at the house of her mother Amrik Kaur. After death of Jail Singh, Karanbir Kaur was wanted to grab benefits amounts alone to be received from the department, but Amrik Kaur had not wanted to give money to Karanbir Kaur. My house and Amrik Kaur's houses are opposite to each other. Yesterday night I was sleeping in my house and time will be around 1:30/ 2:00 AM, I heard the noise of knocking of door of Amrik Kaur's house, but because of heavy load of sleeping I slept again. In the morning I woke up at 5:30 AM and saw that main gate of Amrik Kaur's house was lying opened and I doubted on it, then made call to my brother Bhola Singh. After that I and my brother Bhola Singh went at the house of Amrik Kaur, upon reaching here we saw that Amrik Kaur was lying on cot in the court yard. We shaken her, but she was died and there was symbol on the neck of Amrik Kaur. I have doubt that yesterday night Karanbir Kaur wife of Gagandeep Singh, resident of village Bharowal has brought to some person and they have been strangulated/ pressed her neck and killed to her and went away from the spot. Karanbir Kaur have done this crime by thinking that all benefits of her father Jail Singh shall be received to her.”

6. Today, the learned State counsel has placed on record the additional affidavit of Deputy Superintendent of Police, Sub Division Patti, District Tarn Taran, which is taken on record, thereby, disclosing the role of the present petitioner, as well as the incriminating evidence so collected by the investigating agency. The relevant extract of the same reads as under:-

“That as far as the role of the present petitioner is concerned, it is submitted that the petitioner as well as co-accused

namely Karanbir Kaur have committed the murder of deceased by way of strangulating the deceased Amrik Kaur with the help of dupatta (cloth) and the during the course of interrogation of co-accused Karanbir Kaur, she got recovered dupatta (cloth) from the iron box kept at her in-laws house and further emerged on record that the petitioner has actively participated at the time of committing murder of deceased.”

7. This Court has examined the FIR, reply filed by the State as well as the additional affidavit. There is no evidence on record, except the disclosure statement suffered by the co-accused, the admissibility of such evidence is yet to be examined by the learned trial Court concerned. The recovery of incriminating evidence i.e. dupatta which was used for strangulation was got effected by the co-accused. Further the motive is also attributed to co-accused Karanbir Kaur.

8. The learned State counsel has also placed on record the custody certificate, which make revelations that the petitioner has clean antecedents and has suffered incarceration of 11 months and 25 days as on today. He further informs this Court on instructions imparted to him by ASI Sawinder Singh that out of total 22 witnesses cited by the prosecution, only 1 witness has been examined so far.

9. *“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.

10. 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.

11. 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.”

12. 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.

13. Considering the fact that the other two co-accused have been enlarged on bail and the role of the present petitioner as well as the incarceration suffered by the present petitioner and the stage of the trial,

which is at its initial stage, this Court deems it fit and 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.

14. 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.

(KULDEEP TIWARI)
JUDGE

April 15, 2024
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No