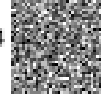


2024:PHHC:073884



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-2736-2023

Date of Decision : May 23, 2024

JATIN

.....Appellant

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Hakam Gill, Advocate,
for the appellant (through V.C.)

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. Through the instant appeal, the appellant has thrown challenge to the order dated 24.08.2023, whereby the application for grant of regular bail filed by the present appellant, in case FIR No.235, dated 05.06.2020, under Sections 148, 149, 302, 307, 323, 201 and 120-B of the IPC, and under Section 25 of the Arms Act, 1959, registered at Police Station Purani Sabzi Mandi, District Rohtak, was dismissed by the learned Additional Sessions Judge, Rohtak.

ALLEGATIONS AGAINST THE APPELLANT

2. The present appellant was arrested in the instant matter on 07.06.2020, and since then he is behind the bars.

3. The prosecution agency was set into motion on a complaint made by one Robin son of Jai Pal Saini, wherein, he stated that he was

serving in the Media Department. The son of his elder uncle Ramandeep @ Shubham was residing at Tagore street, near Gohana Adda, Rohtak. Vishal Som has been residing in his neighbourhood who is quarrelsome type of person and habitual in consuming the liquor. He was habitual in furling abuses and he alongwith his parents expostulated against him to his parents regarding his activities. He also asked the parent of Vishal Som for making him understood. The family members of Vishal assured him not to repeat the occurrence. But accused Vishal @ Som started having grudge against him. Accordingly, Vishal Som on 04.06.2020, at around 10:30 p.m. alongwith his brother Sumit and his family members as well as friends went at the house of Rajpal and furling epithets and returned back. Thereafter, son of his elder uncle, Ramandeep Shubham had gone at Gohana Adda for some work, where Som alongwith his brother Sumit as well as 4-5 other boys. ambushed upon Ramandeep. He received a phone call from his friend Bhagwandass. The accused Som and Sumit alongwith other friends plunged the knife to Ramandeep. The complainant also rushed at the spot. Ramandeep was found lying over there sustained injuries of knife. When he rushed at the spot and entered in between, Som Vishal also caused injuries to him on his chest. He fell down on the road. Som alongwith his brother Sumit fled away from the spot. Ramandeep @ Shubham was taken in the Civil Hospital, Rohtak, where he was succumbed to his injuries. On the basis of the above, the instant FIR, was registered. The post mortem of the deceased Subham was got conducted.

4. The appellant who is a juvenile, was arrested on 07.06.2020,

and during investigation he suffered a disclosure statement, and as per his statement a knife alongwith cloths which the appellant was wearing at the time of the incident, was recovered.

5. He also suffered a disclosure statement, that in order to destroy the evidence he washed the knife used in the crime.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

6. Learned counsel for the appellant in asking for the relief of regular bail, submits that the appellant is admittedly a juvenile, who has been tried as an adult, and is behind the bars since the date of his arrest, i.e. since 07.06.2020.

7. He further submits that the appellant was not even named in the FIR (supra), and no specific role has been assigned to him in the alleged crime.

8. He in addition submits that appellant's name has been figured out only in the disclosure statement of his co-accused, which is a weak piece of evidence.

9. He over and above, submits that the weapon of offence which has been recovered from the present appellant, does not connect him with the alleged crime.

10. He further succor his arguments by stating that the appellant has suffered sufficient incarceration, and he is not involved in any other criminal case.

11. Learned counsel for the appellant has also placed reliance upon an order dated 12.07.2023, passed by a co-ordinate bench of this

Court in CRM-M-26237-2023 (Annexure P-13), whereby, the co-accused has been granted the relief of regular bail, who co-padestrial to the present appellant.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

12. *Per contra*, the learned State counsel vociferously opposed the asked for relief to the present appellant, and submits that there are specific allegations against the present appellant that he alongwith other co-accused, cause injury to the deceased with a knife, and thereafter, destroyed the evidence by washing the knife.

13. To substantiate his arguments, learned State counsel has placed on record a reply, dated 17.02.2024, by way of an affidavit of Sh. Ravi Khundia, DSP, Rohtak.

14. He also submits, on instructions imparted to him by the police official, that the charges have been framed against the present appellant on dated 02.02.2021 and further, out of the total 35 prosecution witnesses, only two has been examined till date.

LEGAL ANALYSIS

15. 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 appeal, it is deemed imperative to capture an overview of some significant legal propositions.

16. “*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.

17. 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.

18. 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 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."

19. 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 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.”

REASONS

20. This Court has considered the submissions made learned counsel for the appellant.

21. It is nowhere disputed that neither the appellant has been named, nor any specific role has been assigned to him, in the instant FIR.

22. It is not under dispute that the appellant is juvenile, but has been tried as an adult, therefore, the parameters for grant of regular bail to a juvenile are applied in this case.

23. Though, this Court has considered the reasons assigned by the learned Additional Sessions Judge, Rohtak, while declining the relief of regular bail to the present appellant, however, this Court does not find any plausible reasons assigned by the said Court, to decline the asked for relief to the present appellant.

24. Learned Additional Sessions Judge concerned, has observed that there is likelihood of the appellant to come into contact with the hard core criminals, in case bail is granted to him. However, to reach such conclusion, there is no substance with the learned Additional Sessions Judge concerned, and no report from the competent authority was called

upon, whether the appellant was ever or in future will join the association of hard core criminals.

25. One of the co-accused who was also not named in the FIR, on the similar allegation, has been alleged against the present appellant, has already been granted the relief of regular bail by a co-ordinate bench of this Court vide order (*supra*).

26. Therefore, this Court is of the view that the instant appeal has merits and the impugned order (*supra*), requires interference by this Court, and is liable to be set aside.

FINAL ORDER

27. Consequently, instant appeal is **allowed**, and the impugned order (*supra*), is hereby set aside. The appellant is ordered to be released on bail, on furnishing of bail bond and surety bond to the satisfaction of concerned Special Court/Chief Judicial Magistrate/trial Court/Duty Magistrate concerned.

28. The court concerned is at liberty to impose such conditions as it deems fit and proper for the welfare of the appellant, while releasing him on regular bail.

29. However, it is clarified that if in future, the appellant 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 appeal only.

30. All pending application(s), if any, also stands disposed of.

May 23, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

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