

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112 CRM-M-52552-2023
Date of Decision : March 22, 2024

HOSSEIN REZAEIFARD -PETITIONER

V/S

STATE OF HARYANA -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Vishal Garg Narwana, Advocate with
Mr. Arishdeep Mraad, Advocate
for the petitioner.

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

KULDEEP TIWARI, J. (ORAL)

1. The petitioner, who is a foreign national (Iranian citizen), has accessed this Court through the instant petition, thereby seeking the concession of him being enlarged on regular bail, in case FIR No.614 dated 23.10.2022, under Sections 379, 34, 419 and 420 of the IPC (Section 304-II of the IPC added subsequently), registered at P.S.Gurgaon Sadar, District Gurugram.

ALLEGATION(S) AGAINST THE PETITIONER

2. Succinctly stated, what constituted the bedrock for registration of the present FIR, was the complaint made by one Nada Ali Salman, on the allegations that, two persons, one of whom impersonated himself as a police official, met her and her husband at the gate of their hotel, and, told them that they are required to be searched, owing to there being suspicion of them carrying some drugs. During search, the said persons took the purse of the

complainant's husband, which contained \$ 15,000 US Dollar, on the pretext that it emits smell of contraband, and thereupon, they fled away with the said purpose.

3. The petitioner, who was arrested in FIR No.69 dated 05.03.2023, under Section 419, 420/34 of the IPC, made a disclosure statement *qua* his involvement in the present FIR. Consequently, based upon his disclosure, he got recovered \$ 5,000 US Dollars in FIR No.69 (supra).

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

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

(i) Petitioner has been falsely implicated in the present case, as he has not been named in the FIR, rather he has been implicated on the basis of his disclosure statement, as allegedly suffered in another FIR;

(ii) Nonetheless, even if the allegations are taken to be a gospel truth, yet no offence under Section 304-II of the IPC is made out, inasmuch as, neither any knowledge, nor any intention has been attributed to the petitioner;

(iii) Petitioner has undergone incarceration of approx. 11½ months;

(iv) Investigation stands completed, whereupon, Final Report has been presented on 09.06.2023;

(v) Since charges are yet to be framed, therefore, the trial is not likely to conclude anytime soon and keeping the petitioner behinds the bars would serve no gainful purpose;

(vi) Though the petitioner is involved in four other criminal

cases, however, he is on bail in all those cases.

(vii) Petitioner does not have any intention to flee from the clutches of law, as his passport and other travel documents have been seized by the police officials;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. *Per contra*, the learned State counsel has vociferously opposed the grant of regular bail to the petitioner, on the ground that, despite him himself being a foreign national (Iranian citizen), yet he, with an evil design, snatched money from another foreign national, who had visited India for surgery of her husband. Owing to this snatching incident, the complainant could not get her husband operated, which ultimately resulted in his demise. Therefore, when the petitioner has brought disrepute to India, an emerging medical hub, he does not deserve the concession of regular bail.

6. The learned State counsel has, on instructions imparted to him by A.S.I. Tarun, has not disputed that the petitioner has been behind the bars since 11.04.2023, and that, charges are yet to be framed.

ANALYSIS

7. “*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.

8. 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.

9. 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.”

10. 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.

11. 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 petition is amenable for being allowed.

12. The reason for forming the above inference emanates from the factum that:- (i) the petitioner has uncontestedly suffered incarceration of approx. 11½ months; (ii) though the petitioner is involved in four other criminal cases, however, he is on bail in all those cases; (iii) no fruitful purpose would be served by keeping the petitioner behind the bars, inasmuch as, there is no likelihood of the trial concluding anytime soon, as despite the Final Report becoming presented on 09.06.2023, charges are yet to be framed.

13. Insofar as the issue “*no offence under Section 304-II of the IPC is made out, inasmuch as, neither any knowledge, nor any intention has been attributed to the petitioner*”, as raised by the learned counsel for

the petitioner is concerned, the same is required to be adjudicated by the learned trial Court, after appreciating the evidence, which may become adduced before it.

FINAL ORDER

14. Considering the hereinabove made discussion, this Court deems it 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. However, the relief (supra) is subject to the petitioner, within 15 days of his release, furnishing his address, where he intends to reside after his release, and, also communicating his mobile number, which he intends to use after his release, to the learned trial Court concerned. The address to be provided by the petitioner shall not be situated within the N.C.R. region, as assured by his counsel. Moreover, the relief (supra) is also subject to the petitioner recording his presence before the jurisdictional police station concerned, at 10:00 a.m., on Sunday of every week. It is clarified that, in case, the petitioner fails to make compliance of any of the conditions (supra), the State shall be at liberty to file an appropriate application, thereby seeking cancellation of the relief (supra).

15. However, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

March 22, 2024
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(KULDEEP TIWARI)
JUDGE

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