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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision : November 25, 2024

AMARDEEP

-PETITIONER

V/S

STATE OF HARYANA

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Keshavam Chaudhri, Advocate with
Mr. Sajal Bansal, Advocate
for the petitioner.

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

KULDEEP TIWARI, J. (ORAL)

1. Through this second petition cast under Section 439 of the Cr.P.C., the petitioner craves for him being enlarged on regular bail, in case FIR No.67 dated 03.02.2022, under Section 302 of the IPC (Sections 34, 201 of the IPC added subsequently), registered at P.S. Pinjore, District Panchkula.

2. Petitioner's initial bail petition bearing No.CRM-M-14890-2023 was dismissed as withdrawn by this Court, vide order dated 18.07.2023. However, on account of there being no progress in the trial since the drawing of the order dated 18.07.2023, petitioner has again approached this Court for claiming the relief of regular bail.

GIST OF THE FIR AND INVESTIGATION

3. The genesis of the present FIR is embodied in the statement made by one Ashok Kumar (hereinafter referred to as the 'complainant').

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The death of the complainant's son Abhinav Chandel (hereinafter referred to as the 'deceased') has constituted the bedrock for registration of the present FIR. The relevant extract of the complainant's statement, as narrated in the reply dated 01.03.2024, is reproduced hereunder:-

"3.present case was registered on the statement of Ashok Kumar son of Khyali Ram, wherein he alleged that he has two sons. His elder son Abhinav Chandel (deceased) was working as Junior Officer in Macleods Pharmaceuticals Ltd., Baddi (H.P) for last one year and was residing in Basti Bagh Colony, Baddi. That further alleged that on dated 30.01.2022, Abhinav Chandel (deceased) told him through mobile phone that he had come to Pinjore for getting the corona test done. Thereafter, on dated 31.01.2022, he (complainant) received a call from Macleods Pharmaceuticals Ltd. Baddi and was apprised that Abhinav Chandel (deceased) has not come to the Company. On making calls, mobile phone of Abhinav was found switched off. Thereafter, he along with other persons came to Baddi in search of Abhinav Chandel. When they went to his room, his son Abhinav (deceased) was not found there. His landlord told that Abhinav did not come to his room since 30.01.2022. In this regard, application was also given for missing report at Police Station, Baddi (H.P). That thereafter, he came to Pinjore side in search of his son. When he was inquiring about his son, he came to know that a dead body is lying at sewerage drain (ganda nala) at Rathpur Colony turn. He immediately went there and found some police officers and other persons were assembled, who were pushing the dead body out from the Nala. Therefore, the complainant and his relative identified the dead body of Abhinav Chandel. Upon these allegation present FIR was came to be registered...."

4. Consequent upon registration of the present FIR, when investigation commenced, thereupon the role of four accused persons, namely, Jaspreet, Bharat Mittal, Amardeep (petitioner) and Rakesh surfaced behind murder of the deceased. The prosecution's case is that, all these

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accused persons and the deceased were/are drug addicts. All of them consumed narcotics and then the deceased started insisting the accused persons for sexual favours, whereupon, the accused persons pushed the deceased on the bed and strangled him. After committing murder, the accused persons disposed of the deceased's dead body in the drain.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

5. The learned counsel for the petitioner submits that, the petitioner has not committed any offence, rather he has been falsely implicated in the present case. To substantiate this claim, he submits that prosecution's most crucial witnesses, who stepped in the witness box respectively as PW5 to PW7 before the learned trial Court, have not supported the prosecution's case against the petitioner. Moreover, even the call detail records collected by the investigating agency do not hold any substance against the petitioner, inasmuch as, neither there occurred any calls between the petitioner and the deceased, nor the petitioner's mobile tower location establishes his presence at the place of occurrence.

6. The learned counsel for the petitioner further submits that, strangely enough, the most clinching evidence in the present case, i.e. C.C.T.V footage of the hotel concerned wherein deceased is alleged to have been murdered, has never seen the light of the day, inasmuch as, it has not been produced before the learned trial Court concerned by the investigating agency.

7. Concluding his arguments, the learned counsel for the petitioner submits that, since there is no likelihood of the trial concluding

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anytime soon, inasmuch as, only nine prosecution witnesses, out of total thirty one witnesses, have been examined so far, therefore, no useful purpose would be served by keeping the petitioner behind the bars, who has been languishing therein since 07.02.2022 and has clean antecedents.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

8. *Per contra*, the learned State counsel has opposed the grant of regular bail to the petitioner, on the ground that, the petitioner played an active role in committing murder of the deceased. To establish petitioner's presence along with his co-accused at the place of occurrence, he submits that petitioner's Airtel bearing Registration No. HR-49-E-6769 was used in the crime.

9. Insofar as the C.C.T.V. footage of the hotel is concerned, the learned State counsel submits that, the said footage was sent for F.S.L. examination and report thereof was received only on 22.08.2024. He submits that the said C.C.T.V footage will be produced before the learned trial Court on the adjourned date, i.e. 05.12.2024.

10. Furthermore, on instructions imparted to him by the official concerned, the learned State counsel has verified that, only nine prosecution witnesses, out of total thirty one witnesses, have been examined so far. Also, he does not dispute the period of incarceration suffered by the petitioner and his clean antecedents.

ANALYSIS

11. 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 petition, it is deemed imperative to capture an



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overview of some significant legal propositions.

12. *“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 Baliy”, 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.

13. 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.

14. 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."

15. 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.

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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."

FINAL ORDER

16. Be that as it may, taking into account the fact that: (i) prosecution's crucial witnesses, namely, PW5 Sumit Kumar, PW6 Raj Kumar and PW7 Sudhir Kumar, have not supported the prosecution's case against the petitioner before the learned trial Court; (ii) the most clinching evidence, i.e. C.C.T.V. footage of the hotel concerned, is yet to see light of the day, inasmuch as, it is yet to be produced before the learned trial Court; (iii) the case is based upon circumstantial evidence, therefore, whether the incriminatory material collected by the prosecution is sufficient to bring home the guilt of the petitioner and his co-accused, is a moot question to be decided by the learned trial Court; (iv) the petitioner has been behind the bars since 07.02.2022 and has clean antecedents; (iii) the snail pace of trial and there being no likelihood of its becoming concluded anytime soon,



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inasmuch as, only nine prosecution witnesses, out of total thirty one witnesses, have been examined so far; 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.

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

November 25, 2024
devinder

(KULDEEP TIWARI)
JUDGE

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