

CRM-M-54344-2023(O&M)

2024:PHHC:009148

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

107

CRM-M-54344-2023(O&M)

Date of Decision : January 24, 2024

VANSH

.....Petitioner

***VERSUS***

STATE OF UNION TERRITORY, CHANDIGARH

.....Respondent

**CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Edward Augustine George, Advocate  
for the petitioner.

Mr. Sarvjit, APP for UT, Chandigarh.

**KULDEEP TIWARI, J. (Oral)**

1. Through the instant petition, the petitioner, who is 20 years old, craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.133 dated 4.8.2023, under Sections 377, 323, 506, 363, 120-B IPC and Sections 4 and 6 of the POCSO Act, 2012, registered at P.S. Sector-31, Chandigarh.

***ALLEGATIONS AGAINST THE PETITIONER***

2. The allegations against the present petitioner, as recorded by the learned trial Court concerned in its order dated 18.9.2023 while declining the relief of regular bail read as under:-

“In brief, facts of the matter are that the present case was registered on the complaint of brother of victim boy aged 16 years with the allegations that the victim regularly take evening walk from 08:00 PM to 09:00 PM. On 03.08.2023 at around 08:00 PM, victim

went for walk and returned at about 10:00 PM and was crying. When he asked the victim about the reason of his crying, he continued crying with immense fear. When he scolded victim, then he told that while he was walking in the park near Khera Mandir, two boys kidnapped him and took him away to the jungle area on the side of slip road near Aggarwal Nursing and they had subjected him to unnatural sex. They threatened him to kill, if he disclosed the incident to anyone. One of the offender, is Vansh and another name is not known to victim.”

***SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER***

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has submitted that the entire version is a result of concoction and due deliberations, as the petitioner has no role whatsoever in the commission of alleged crime. In order to lend vigor to his arguments, he has drawn the attention of this Court to the MLR of the victim, as per which, there is no injury, rather it suggests that no such offence was ever committed with the victim. He has further drawn the attention of this Court to the statement of the victim, who was examined as PW4. The relevant part reads as under:-

“Q Do you know those boys?

A. One boy was Vansh and other boy was fat.

Q. Then what happened?

A. One fat boy hit me on my back and the other dragged me behind the park.

Q. What happened when you were dragged?

A. Vansh left the place and the second one the fat boy applied spit on my back and inserted something into my anal

area. It caused pain to me.

Q. Anything else was done by the fat boy?

A. The fat boy i.e. second boy inserted his private part into my mouth. Then I came back home.

Q. When did you tell about the incident at home?

A. I told about the incident to my mother after some days. My mother told about the incident to my brother.

After the case was registered I was taken for medical examination to GMSH 16 Chandigarh on 04.08.2023. I identify my signature on MLR Exh.PW4/1. I was also taken to GMSH 16 Chandigarh on 11.08.2023 for purpose of ossification test. I have told about the place of incident to my mother. I identify my signatures on arrest memo Exh.PW4/2 and also on personal search memo Exh.PW4/3 at point A.

4. After referring the above part of the statement of the victim, he submits that no allegation whatsoever of sexual assault has been leveled against the present petitioner, rather in fact the same have been levelled against the co-accused, who is a juvenile and is facing trial as an adult before the Child Court concerned.

***SUBMISSIONS OF THE LEARNED STATE COUNSEL***

5. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificate of the petitioner, as issued by the Addl. Superintendent, Model Jail, Chandigarh. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 5 months and 20 days as on today. Further, on instructions imparted to him, by the official concerned he submits that the final report has already been submitted before the learned trial Court

concerned way back on 27.9.2023 and the charges have also been framed way back on 2.11.2023 and out of total nineteen cited prosecution witnesses, only six have been examined so far whereas, one witness has been given up being unnecessary.

### ***ANALYSIS***

6. *“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.

7. 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.

8. 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.”*

9. 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.*

10. 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.

***FINAL ORDER***

11. Considering the fact that the victim has not been attributed any allegation qua sexual assault upon the petitioner, coupled with the fact that the petitioner has already suffered incarceration of 5 months and 20 days and the completion of the trial would take long time, 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.

12. 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.

January 24, 2024  
ajay-1

(KULDEEP TIWARI)  
JUDGE

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