

CRM-M-55490-2023

2024:PHHC:020824

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-M-55490-2023

Date of Decision : February 14, 2024

KULJINDER KAUR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Ms. Divya Sharma, Advocate
for the petitioner.

Mr. Raghav Garg, AAG, Punjab.

Mr. Amit Arora, Advocate
for the complainant.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for her being enlarged on regular bail in FIR No.84 dated 23.5.2023, under Sections 302, 506, 34, 120-B IPC and Sections 25 and 27 of the Arms Act, registered at P.S. Sadar Patti, District Tarn Taran.

2. The prosecution agency was set into motion on a statement made by one Harbhajan Singh son of late Puran Singh. The relevant contents of the FIR are reproduced hereinunder:-

“Statement of Harbhajan Singh son of late
Puran Singh son of late Suba Singh Resident of Village
Saidpur Police Station Sadar Patti Tehsil Patti District

Tarn Taran aged about 75 years Mobile No: 99142-56415 stated that I am a resident of the aforesaid address and engaged in agriculture. We are four brothers. My other three brothers have died. I have three children out of whom my eldest son Jagdeep Singh died about 15 years ago. Younger to him is my daughter Manjinder Kaur who is married and the youngest is my son Jagroop Singh aged about 26 years. About two months ago, my son Jagroop Singh and a girl from our village Manjot Kaur daughter of Ranjit Singh, son of Bakshish Singh went from the village with mutual consent and returned after 4-5 days on account of counselling by family members and returned to their respective homes. But Manjot Kaur's uncle's son Jujbir Singh son of Daljit Singh, kept this grudge in his mind and kept threatening us to teach us a lesson. Today on 23.05.2023 at about 6:00 P.M., my son Jagroop Singh along with fellow villagers was playing football in the ground of the government school of our village. I along with my nephew Karnaljit Singh son of Harjinder Singh went on motorcycle to get him for some important work. I stood on one side of the ground and called out to Jagroop Singh. When he was coming towards us, Jujbir Singh son of Daljit Singh, who had a pistol in his hand and was

accompanied by two other unidentified companions, came from behind and raised lalkara to not spare Jugroop Singh. Jajbir Singh fired straight shot with his pistol which hit my son Jagroop Singh on the back side of his neck and my son fell on the ground in a pool of blood. We raised a loud cry of *mar dita mar dita* upon which the assailants threatened us and fled away from the scene along with their weapons. I and Karnaljit Singh arranged a vehicle and took Jagroop Singh to the Civil Hospital Patti for treatment, where the doctor declared Jagroop Singh dead after checking. The reason for the grudge is that two months ago, my son Jagroop Singh and Manjot Kaur, the daughter of Judgbir Singh's uncle, left home with mutual consent, but later on both parties compromised the matter and returned with mutual consent. However, Jajbir Singh kept a grudge and for this reason Judgbir Singh along with his companions murdered by my son Jagroop Singh by firing at him. I left my nephew Karnaljit Singh in the Civil Hospital to protect the dead body and was going along with Jaswinder Singh son of Surjit Singh resident of Saidpur to inform you when I met you. Statement has been got recorded, the same is correct and appropriate legal action be taken.”

3. A perusal of the FIR transpires that it was the co-accused

Jujbir Singh, brother of the present petitioner, who had fired a gun shot, which hit on the neck of deceased Jagroop Singh and resulted in his death. It is not in dispute that as per post-mortem report, the deceased suffered a single gun shot injury on his vital part and further during the course of investigation, on 30.5.2023, DDR No.31 dated 30.5.2023 was recorded, which speaks about the arrest of one co-accused Gurpreet Singh @ Billa, who was stated/alleged to be in association with the main accused Jujbir Singh at the time of commission of present offence and the co-accused Gurpreet Singh @ Billa during interrogation/investigation made a disclosure statement that the present petitioner also instigated and conspired alongwith other co-accused to commit the murder of deceased-Jagroop Singh. On the basis of the above mentioned DDR, which was recorded after a delay of 7 days of the occurrence, the present petitioner was nominated in the array of the accused.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

4. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, forcefully submits that there is no as such evidence against the present petitioner, which can connect him with the alleged crime, rather it is a case of clear cut false implication. She further submits that her name was not figured in the present FIR, whereas, the name of his brother was there as a main accused/assailant. She also submits that in the entire final report, which was filed before the learned Ilaqa Magistrate concerned, there is no such evidence to connect the present petitioner with the crime. She further states that she was a married lady and is living in a different village, therefore, no motive can

be attributed to her, to be a part of the conspiracy, that too, when the entire motive is attributed to her brother, who according to the prosecution, was keeping a grudge against the deceased, for the reason that the deceased had enticed away the cousin of accused-Jujbir Singh and the present petitioner. She further submits that the petitioner has already suffered incarceration of about 8 months and 16 days as on today and the final report under Section 173 Cr.P.C. has already been filed and the learned Ilaka Magistrate concerned has already committed the case to the Court of Sessions.

SUBMISSIONS OF THE LEARNED STATE COUNSEL AS WELL AS BY THE LEARNED COUNSEL FOR THE COMPLAINANT

5. In compliance of the order dated 8.1.2024, passed by this Court, the learned State counsel has filed the additional affidavit of DSP, Sub Division, Patti, District Tarn Taran. The same is taken on record. The learned State counsel vociferously opposed the asked for relief on the ground that the present petitioner is also one of the main conspirator and also instigated the main accused to commit the murder of the deceased. To lend strength to his argument, the learned State counsel draws the attention of this Court to Annexure R-2, attached with the additional affidavit dated 14.2.2024, which is a disclosure statement of co-accused under Section 27 of the Evidence Act. The relevant extract reads as under:-

“During the interrogation in the presence of the following witness, accused Gurpreet Singh alias Billa son of Hardeep Singh, a resident of Saidpur disclosed before me that we had planned to kill Jagroop Singh at the

house of Judgbir Singh at that time Judgbir Singh and Judgbir Singh's sister Kulwinder Kaur, who is married to Gurpreet Singh resident of Nushera Pannua was also present. Kulwinder Kaur said that Jagroop Singh has an evil eye on me too and “**ESDA KANDA KAD DAYIE**”. The planning was made while sitting at Judgebir's house. His disclosure statement was recorded.”

With the strength of the disclosure statement, he submits that the role of the present petitioner is there, therefore, she is not entitled for the grant of relief of regular bail.

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. On the touchstone of the above discussion, this Court is of the view that the instant petition deserves to be allowed for the reasons recorded hereinafter.

11. On 8.1.2024, this Court had directed the State to file a specific affidavit, detailing therein, whether there is any other incriminating evidence collected by the investigating agency except the disclosure statement of co-accused Gurpreet Singh @ Billa. In response to the specific query raised by this Court, an additional affidavit has been filed, today in the Court, however, the same also does not mention any incriminating material except, disclosure statement (supra) and infact gives strength to the submissions made by the learned counsel for the petitioner.

CRM-M-55490-2023

12. Considering the allegations against the present petitioner and the fact that the petitioner is a married lady and has spent 8 months and 16 days in custody and having clean antecedents, this Court, at this stage, without commenting upon the merits and circumstances of the present case, deems it fit and appropriate to enlarge the present petitioner on bail.

13. In view of the above, 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. Anything observed here-in-above is only for the purpose to evaluate the entitlement of the petitioner to release her on bail, which shall have no bearing on the merits of the trial.

February 14, 2024
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(KULDEEP TIWARI)
JUDGE

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