

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

220

CRM-M-55917-2023
Date of decision: 15.02.2024

DEEP KUMAR @ DEEPAK KUMAR

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

Mr. Tushaar Madaan, Advocate for the complainant.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.95 dated 21.03.2023, under Sections 307 and 427 of IPC, under Sections 25 and 27 of the Arms Act (now both the Sections 25 and 27 of the Arms Act stands deleted, and under Section 30 of the Arms Act added later on), registered at City Hoshiarpur, District Hoshiarpur.

ALLEGATIONS AGAINST THE PETITIONER

2. The allegations against the present petitioner, are that he had opened fire upon the complainant party, and fired two gun shots. The first fire shot missed, and hit on the window pane of the car, whereas, the second fire shot had hit Dheeraj Kumar on the left side of his hip.

The instant FIR has been lodged on the complaint of one Dheeraj

Kumar (victim), on 21.03.2023, the relevant extract of the FIR reads as under:-

"Statement of Dheeraj Kumar son of Late Sh. Ashok Kumar resident of H.No.351, Gali No.03, Vijay Nagar, P.S. Model Town, Hoshiarpur aged about 32 years Mobile No. 7888862655. Stated that I am resident of above mentioned address and is working as property dealer. About six years ago, I was doing work of property dealer jointly with Randhir Singh @ Dheera son of Avtar Singh resident of Pandori, P.S. Bullowal and Deep Kumar @ Deepak son of Dhani Ram resident of New Fatehgarh, near Desh Bhagat College, P.S. Model Town, Hoshiarpur and there was financial dealing between us. Approximately, 1 1/2 year ago, we separated our business from Deep Kumar Deepak due to monetary issues and now I along with Randhir Singh @ Dheera are working together and Deepak is doing his work separately. Some amount was to be paid by Deep Kumar @ Deepak to us and in this regard we had asked him to talk regarding said money, but, every time Deep Kumar @ Deepak used to put off the matter on one excuse or the other. Today, I along with Randhir Singh @ Dheera had gone to Tehsil Complex Hoshiarpur for some personal work and Randhir Singh & Dheera made a phone call to Deep Kumar Deepak and told him to come at Tehsil Complex, Hoshiarpur and settle the accounts. On this, at about 12:10 P.M., Deep Kumar @ Deepak reached Tehsil Office, Hoshiarpur and we asked him about our money, but he replied that doesn't own them any money and they can do whatever they can. Thereafter, in anger he took out his Revolver from his car make Kia bearing No.PB-07-BX-6400 (white coloured) and upon coming he fired

shot upon us. First, he gave shot fire on Randhir Singh @ Dheera but he sat down in order to save himself, due to which said shot hit on the back side glass of the Verna Car. Thereafter, Deep Kumar & Deepak fired second shot on me, which hit above my left thigh on my left side of hip and due to which I fell down. I raised noise mar ditta mar ditta and on hearing his noise a number of persons gathered at the spot. On seeing the gathered persons at the spot, Deep Kumar @ Deepak fled away from the spot in his car PB-07-BX-6400 along with his revolver."

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. 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;***
- (ii) It is a cross-firing incident, amongst the business partners, due to some monetary dispute, and in the cross-firing, the petitioner has also suffered a gun shot injury;***
- (iii) The MLR report (Annexure P-2) reveals that the petitioner has also suffered a gun shot injury in the present occurrence;***
- (iv) Petitioner has suffered incarceration of almost 11 months, and the trial is at an initial stage;***
- (v) Despite the gun shot injury suffered by the petitioner at the hands of the complainant, the Police has not taken any action, which propelled the petitioner to file an application under Section 156(3) Cr.P.C, before the Magistrate concerned, and the same is pending for recording of pre-summoning evidence.***

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. On the other hand learned State counsel, on instructions, imparted to him by the official respondent, submits that the petitioner not only caused injury through gun shot, but in order to falsely implicate the victim-complainant, has also self-suffered a gun shot injury, and because of above mentioned reason, an inquiry was conducted by the investigating agency, and the version of the petitioner was found to be completely false. Learned State counsel further submits that the final report has been filed on 15.05.2023, and the charges have been framed on 17.07.2023. Learned State counsel also submits that out of the total 15 prosecution witnesses cited in the final report, only 01 prosecution witnesses has been examined till date.

ANALYSIS

5. *“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.

6. 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.

7. 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.”

8. 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.

9. 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, and refrain itself to examine the veracity of the allegations as levelled by the petitioner, against the complainant, regarding gun shot injury.

10. The reason for forming the above inference emanates from the factum that:- (i) The petitioner has suffered incarceration of about 10 months and 27 days,

as on today; (ii) The trial of the case is at an initial stage, as out of the total 15 prosecution witnesses cited in the final report, only 01 prosecution witnesses has been examined till date; (iii) No fruitful purpose would be served by keeping the petitioner behind the bars (iv) The petitioner is not involved in any other criminal case.

FINAL ORDER

11. 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.

12. It is further made clear that the petitioner shall not cause any threat to the witnesses cited by the prosecution in the final report, and in case the petitioner is found involved in any other criminal case, the learned State counsel is at liberty to ask for the cancellation of the bail of the present petitioner, as granted by this Court.

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

14. All pending application(s) stand disposed of accordingly.

15.02.2024
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No