

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

212

CRM-M-59099-2023

Date of decision: 29.04.2024

RAHUL @ DOOM

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Kamaldeep Kumar, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

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.247 dated 27.04.2023, under Sections 302, 307 and 506 of IPC, registered at Police Station Ambala, Cantt, District Ambala. The petitioner is the first time offender, and was arrested in the instant petition on 28.04.2023, and is behind the bars since then, and craves for grant of regular bail.

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR was registered on a statement made by one Sheetal, wife of Robin, wherein, she alleges that the accused-petitioner, and the complainant are neighbors, and there was some dispute with regard to the payment of auto fare, as the accused-petitioner demanded Rs.250/- from the husband of the complainant, and upon which her husband replied that the amount will be paid after some time. However on 21.04.2023, at about 1:00 PM in the noon, when the complainant, and

her husband were going towards market, then accused-Rahul came from back side, in a three-wheeler, and upon seeing us, accused-Rahul started abusing us, and thereupon he picked up a stick from roadside, and gave a blow on the head and legs of the husband of the complainant with a motive to kill. The accused-petitioner thrown her husband on the ground, and caused injuries on the head, with an iron bangle (kada), upon which the complainant raised noise, and then passerby have saved her husband, and the accused-petitioner left the place. However, the accused-petitioner threatened the husband of the complainant, that he will kill him next time. The complainant then took the husband to the house, and she gave her husband turmeric milk, so that he could recover from the injuries. However on 25.04.2023, due to the injuries suffered by her husband, his health got deteriorated, and he was referred to a Government Hospital Ambala Cantt for treatment, where due to serious condition, the doctors have referred the complainant's husband to PGI Sector 12, Chandigarh, who further advised the complainant that her husband is required to be operated, due to appearance of blood clots in the brain. Thereupon, the husband of the complainant become seriously ill, and finally died.

3. On the above statement, the instant FIR was registered under Sections 307 and 506 of IPC. On 28.04.2023, in the morning, a information was received regarding death of injured Robin, upon which the requisite proceedings under Section 174 of IPC, were carried out, and postmortem was also got conducted, and thereupon, the offence under Section 302 of IPC, was added later on in the instant FIR, and on the same day i.e. on 28.04.2023, and the present petitioner was arrested. During investigation, one bamboo stick, and iron kada were got recovered from the present petitioner. After completion of investigation, the final report was also filed.

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) There is a huge of delay in registering the instant FIR, rather it is a case of concoction;*
- (ii) At the best, even if we believe the prosecution story, it is case of Section 304 IPC, and not of Section 302 IPC;*
- (iii) The assault history which finds mentioned in the postmortem report, reads as under:-*

"PATIENT WAS REFFERED FROM CH AMBALA CANTT VIDE UHIO NO 402021042851 DATED 25.4.23 WITH ALLEGED HISTORY OF ASSAULT 3 DAYS BACK GENERAL CONDITION SICK, GCS POOR UNCONSCIOUS DISORIENTED. AS PER LAMA SUMMERY FROM PGI CHANDIGARH DATED 26.4.23 VIDE NO 202302483098 PATIENT WAS ADMITTED ON 25.4.23 WITH HISTORY OF ASSAULT WITH HEAD INJURY. AS PER SUMMERY ALLEGED HISTORY OF ASSAULT BY A KNOWN PERSON FROM BACK OVER THE HEAD WITH A STICK. ONE EPISODE OF VOMMITING ON EXAMINATION PATIENT ET1 VI M3. PUPILS RIGHT SIDE NON REACTING TO LIGHT AND LEFT SIDE SLIGHTLY REACTING TO LIGHT. RIGHT FRONTOTEMPORO PARIETAL ACUTE ON CHRONIC SUBDURAL HEMATOMA WITH MIDLINE SHIFT DISEASE PROGNOSIS AND REQUIREMENT OF SURGICAL INTERVENTION EXPLAINED TO ATTENDANTS. THEY LEFT AGAINST MEDICAL ADVISE PATIENT WAS BROUGHT DEAD IN CHAMBAL CANTT ON 28.4.23 AT ABOUT 8:40 AM"

- (iv) At the time of assault, it was mentioned in the post mortem*

examination report that the deceased was assaulted by a known person from the back, over the head, with a stick.

(v) As per the prosecution, the incident occurred on 21.04.2023, whereas, the present FIR was registered on 27.04.2023, accordingly, there is a delay of 06 days in registering the instant FIR.

(vi) It is a clear cut case of concoction, and false implication, inasmuch as, as per the prosecution itself, the complainant was present on the spot of occurrence, therefore, had the petitioner really been present on the spot, and inflicted injuries to her husband, she must have identified the petitioner, as the assailant, and disclosed his name at the time of the medico legal examination, because she very well knew the petitioner, being his neighbor. Non disclosure of petitioner's identity as an assailant by the complainant, being an eyewitness, creates suspicion over the entire prosecution story.

(vii) The deceased has died due to inadequate medical support at the relevant time.

(Viii) As per the prosecution, after the date of occurrence, the complainant took the deceased at her home, and the deceased remained at home till 24.04.2024, and once his health condition got deteriorated, only then he was taken to the hospital.

(ix) Even the doctor's opinion of getting the deceased operated, for removing blood clot from his head, was not adhered too by the complainant, which led to his death.

(x) Petitioner has no criminal antecedents, therefore he deserves the relief of regular bail.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Learned State counsel has opposed the grant of regular bail to the petitioner on the ground that petitioner is the sole accused, and the specific injury on the head of the deceased is attributed to the present petitioner, therefore, the present petitioner is not entitled for the relief of regular bail. Learned State counsel on instructions, imparted to him from the official respondent, submits that the investigation in the present case has been completed, and final report was filed way back on 16.05.2023, but the charges are yet to be framed, and the next date before the learned trial Court concerned is on 08.11.2024.

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 Balia*”, 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.

10. The reason for forming the above inference emanates from the factum that:- (i) It is a case of the prosecution that the petitioner was armed with bamboo stick, and iron kada, and caused injuries to the deceased, however, the same was not mentioned by the complainant, who was very well known to the petitioner, and the same was not mentioned at the time of MLR; (ii) Further there is delay of 06 days in

registration of the present FIR; (iii) The issue which is raised by the petitioner regarding whether, the offence under Section 302 or Section 304 IPC is attributed in the instant case, is a disputed question of fact, which can only be adjudicated by the learned trial Court concerned, (iv) The investigation in the present case has been completed, and the final report was filed on 16.05.2023, but the charges are yet to be framed, and the next date before the learned trial Court concerned is 08.11.2024, (v) No fruitful purpose would be served by keeping the petitioner behind the bars, (vi) Trial is not likely to conclude anytime soon..

FINAL ORDER

11. Considering the hereinabove made discussion, this Court deems it fit and 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, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.
13. All pending application(s) stand disposed of accordingly.

29.04.2024
amandeep

(KULDEEP TIWARI)
JUDGE

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