

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106 CRM-M-59068-2023
Date of Decision : March 19, 2024

RAVINDER ALIAS GULLU -PETITIONER

V/S

STATE OF HARYANA -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Rao Ajender Singh, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., 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.40 dated 04.02.2023, under Sections 147, 148, 149, 323, 452, 506 of the IPC (Section 302 of the IPC added subsequently), registered at P.S. Narwana City, District Jind.

ALLEGATION(S) AGAINST THE PETITIONER

2. Succinctly stated, the allegation(s) against the petitioner is that he along with his co-accused intruded into the house of the complainant and caused injuries to her and her family members. In this assault, one Misro Devi, who was grandmother-in-law of the complainant, lost her life.

3. For ready reference, the relevant extract of complainant's statement, which led to registration of the present FIR, and, which is narrated in the order dated 11.10.2023, whereby, the learned Additional Sessions Judge, Jind, has declined to grant bail to the petitioner, is extracted

hereinafter:-

“... On 03.02.2023 at about 10-30 p.m. she alongwith her husband Raju, brother-in-law Somu and grand-mother-in-law Misro were present at their house. She told her husband Raju to bring diaper for her child. On this her husband stepped out from the house to bring the diaper and went to the street where one Ajay son of Manu was already present in the street, who started abusing her husband in high volume. After hearing the voice she came out of the house and she saw that her husband was asked Ajay not to abuse. Thereafter, Ajay slapped her husband then her husband returned to the house. In the meantime, Ajay bring a sword from his house alongwith his family member, associates and relatives namely Suraj son of Ram Sarup, who was having a gandasi in his hand, Sethi son of Oma who was having a danda in his hand, Sonu son of Mamu who was having a hockey, Bittu son of Abu, Gullu son of Balwan, Baba son of Ram Kumar, Gaurav son of Rajesh, Bimla wife of Ram Sarup forcibly entered in their house. They were sitting in a room in their house and all attacked them. Ajay gave blow with reverse side of sword. Suraj also gave blow with reverse side of gandasi to her grand-mother-in-law. Thereafter, Sethi, Sonu, Bittu attacked on her husband, her grand-mother-in-law and brother-in-law Somu with dandas which were took in their hands and Baba, Gaurav and Bimla gave slap and fist blows to her, her husband, her grand-mother-in-law and brother-in-law Somu. Thereafter, they raised alarm then all the persons on seeing the persons of their locality, ran away from the spot with their weapons. While running Bimla threatened they have been saved and again met then they would be killed and they would not allow them to reside in this locality. She saved her child with difficulties. Locality persons called ambulance and thereafter she shifted her husband, grand mother-in-law and brother-in-law to Civil Hospital for treatment. Due to serious condition of her grand mother-in-law, doctors referred her MAMC, Agroha where she is under treatment. After the Panchayat, the family members of complaint took her with them...”

4. The record, as available before this Court, makes revelations

that initially a case was registered under Sections 147, 148, 149, 323, 452, 506 of the IPC. However, upon demise of injured Misro Devi, offence under Section 302 of the IPC was incorporated in the present FIR.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

5. The learned counsel appearing for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

(i) Though name of the petitioner surfaces in the FIR, however, no specific role or injury has been assigned to him therein;

(ii) The sole allegation against the petitioner is that he along with his co-accused intruded into the house of the complainant. Moreover, no motive whatsoever has been assigned to the petitioner;

(iii) Though the petitioner is alleged to have suffered a disclosure qua him along with his co-accused giving slaps and fist blows to family members of the complainant, including deceased Misro Devi, however, the said disclosure statement is inadmissible, inasmuch as, it was recorded during police custody;

(iv) Nonetheless, even if the allegations are taken to be a gospel truth, yet no offence under Section 302 of the IPC is made out, and, offence only under Section 304 of the IPC can be attracted at the most, inasmuch as, the demise of injured Misro Devi had occurred after 3 days of the alleged occurrence;

(v) Out of total 9 accused, 6 accused, including the one(s) who inflicted injuries to deceased Misro Devi, are facing trial,

whereas, 3 accused are absconding;

(vi) The petitioner has clean antecedents, as he is not involved in any other criminal proceedings;

(vii) The petitioner was arrested on 14.02.2023, whereupon, he was put behind bars and as on today, he has undergone incarceration of approx. 1 year and 1 month;

(viii) the trial is not likely to conclude anytime soon, as despite charges becoming framed on 12.07.2023, only two prosecution witnesses, out of total 19 witnesses, have been examined so far, therefore, keeping the petitioner behind the bars would serve no gainful purpose;

SUBMISSIONS OF THE LEARNED STATE COUNSEL

6. Since the petitioner has been facing trial for commission of offence under Section 302 of the IPC, this Court had directed the learned State counsel to file a status report, which has been filed on affidavit of Amit Bhatia, Deputy Superintendent of Police, Narwana, District Jind. The status report is taken on record.

7. The learned State counsel though has vehemently opposed the grant of the asked for relief (*supra*), however, he does not dispute the *factum qua* period of incarceration suffered by the petitioner. Moreover, on instructions imparted to him by the official concerned, he has further verified that out of total 19 prosecution witnesses, only 2 witnesses have been examined so far.

ANALYSIS

8. “*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.

9. 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.

10. 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.”

11. 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.

12. Be that as it may, 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.

13. The reason for forming the above inference emanates from the

factum that:- (i) neither any specific role, nor any injury, nor any motive for murder of deceased Misro Devi, except the petitioner being alleged to be present at the spot, has been attributed in the present FIR; (ii) probative value of the material available on record is yet to be established during the course of trial; (iii) petitioner has undisputedly suffered incarceration of approx. 1 year and 1 month and he has clean past antecedents, inasmuch as, he is not involved in any other criminal case; (iv) trial is not likely to conclude anytime soon, as 17 prosecution witnesses, out of total 19 witnesses, are yet to be examined.

FINAL ORDER

14. 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.

March 19, 2024
devinder

(KULDEEP TIWARI)
JUDGE

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