

CRM-M-60073-2023 &
CRM-M-60366-2023

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2024:PHHC:037141

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

CRM-M-60073-2023

Date of Decision : March 13, 2023

SONU YADAV

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CRM-M-60366-2023

RAJESH KUMAR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr.Nitin Meel, Advocate,
for the petitioner in CRM-M-60073-2023.

Mr.I.S.Chawla, Advocate,
for the petitioner CRM-M-60366-2023

Mr.Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI. J.(Oral)

1. Since both the petitions arise out of the same FIR therefore,
both are taken together for its adjudication.

2. Through the instant petition filed under Section 439 Cr.P.C.
the petitioners pray for grant of regular bail in case FIR No.136, dated
17.11.2022, under Sections 302, 323 and 34 of the IPC, registered at
Police Station Khulan Sarwar, District Fazilka.

ALLEGATIONS AGAINST THE PETITIONERS

3. The prosecution agency was set into motion on a statement made by one Surjit Singh, the relevant extract of the FIR reads as under:-

"Statement of Surjit Singh son of Pritam Singh, resident of Village Dalmir Khera, aged about 32 years, Mobile No. 94655 05298. Stated that I am residing at above noted address and is serving as Driver on a Bus belonging to AVS Transport Company. One Bhim Sain son of Om Parkash son of Purkha Ram, resident of Village Waryam Khera, is serving as Conductor in said company. We both collectively use to leave for job on Motorcycle, drop the motorcycle in morning hourse at village Shergarh and then come back to home on my Motorcycle. On 16.11.2022, in evening hours, we both were coming from village Shergarh towards village Waryam Khera on my Motorcycle bearing Registration No.PB 46 E 2432 make Spiender. Bhim Sain was riding said Motorcycle, while I was sitting on pillion seat. At about 8.00 P.M., when we were about 1.00 K.M. before village Waryam Khera, at that time, four youngsters, having muffled their face, found present at Link Road. One of them was carrying iron rod, while two other persons were carrying base ball and fourth youngster was carrying a hockey stick, who gave signal to stop with the help of torch. We found in torch light of our motorcycle that the said youngsters were having a motorcycle. As Bhim Sain stopped the motorcycle, the said unidentified youngster, carrying rod, asked in Bagri language as to who are you, on which, Bhim Sain told his name. On coming to know about his name, all the said four unidentified youngsters attacked on Bhim Sain and inflicted injuries in his head with a motive to kill him. I tried to rescue Bhim Sain from clutches of said assailants, on which, said unidentified youngsters gave blows of their base ball to me, which rested on my right eye & right cheek. Bhim Sen raised his hands in order to save himself, on which, the blows given by said unidentified youngsters hit on both his hands. Bhim Sen collapsed on ground, however said youngsters constantly kept on inflicting him injuries and finally, they committed murder of Bhim Sain. Then all the said four unidentified persons with their respective weapons fled away towards village Waryam Khera from the spot on their Motorcycle, lying parked nearby. I raised alarm, on which, my brother Gurmukh Singh and family members of deceased Bhim Sain arrived at the spot. I narrated them entire matter. My brother left the family members of deceased Bhim Sain near his dead body and got me admitted in Civil Hospital, Abohar, where I am under treatment. I can identify all the said four unidentified youngsters, who murdered said Bhim Sain and inflicted injuries on my person, if appeared before me. So due legal action may be taken against all the said four youngsters. Statement got recorded, understood, it is correct."

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

4. Learned counsel for the petitioners submit that the only star

witness i.e. the complainant/injured, who stepped into the witness box as PW-3, did not support the case of the prosecution, and has turned hostile.

5. They further submit that there is no other evidence with the prosecution which can connect the petitioners with the crime as involved in the present petition.

6. They also submit that the petitioners have already suffered incarceration of more than 1 year, and out of the total 26 prosecution witnesses 10 have been examined so far, therefore, the conclusion of trial will take long time.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. *Per contra*, the learned State counsel vociferously opposed the asked for relief, and has placed on record separate replies dated 12.03.2024, by way of affidavits of Mr. Arun Mundan, DSP, Sub-Division, Abohar, District Fazilka, and also the custody certificate *qua* the petitioners, which are taken on record.

8. Learned State counsel, on instructions imparted to him by ASI Lakhwinder Singh, informs this Court that out of the total 26 prosecution witnesses cited by the prosecution in the final report, 05 witnesses have already been examined, however, one witness has been given up by the prosecution so far, and next date before the learned trial Court concerned is dated 14.03.2024.

9. A perusal of the custody certificate reveals that the petitioners have suffered incarceration of 1 year, 03 months and 11 days as on today.

ANALYSIS

10. This Court has heard the learned counsel for both the parties concerned, and has gone through the entire case file, and also the replies filed by the State.

11. This Court has examined the replies (*supra*), and as per the reply, two persons suffered injury, i.e. one Surjit Singh (complainant) and another Bhim Sain. Whereas Bhim Sain scummed to his injuries. In the reply (*supra*), the cause of death as reported by the Board of Doctors reads as under:-

“In the opinion of the Board, cause of death is injury to vital organs like brain and excessive blood due to multiple injuries which is sufficient to cause death in ordinary course of nature.”

12. During the investigation, the weapon of offence was recovered from the present petitioners.

13. The motive which was assigned for committing the alleged crime, was that the accused Parveen was residing in the neighbourhood of deceased Bhim Sain, and one Golu (uncle of the accused Parveen), who was also residing in the same street. Two months back of the occurrence said Golu struck his tractor-trolley against the wall of the deceased-Bhim Sain, due to which there was an altercation between accused Golu and Parveen, and the deceased Bhim Sain. Furthermore, there was another instance of altercation between accused Parveen and deceased Bhim Sain on playing DJ on high volume.

14. Therefore, the accused Parveen and Golu were nursing grudges against the deceased Bhim Sain. All the accused including the

present petitioner in connivance with each other killed Bhim Sain, by causing injuries to him.

15. *“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.

16. 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.

17. 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.”

18. 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.

19. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

FINAL ORDER

20. Though there are specific allegations against the present petitioners, that they have caused injuries to the deceased-Bhim Sain, however, considering the fact that the main star eye-witness of the prosecution, who is the complainant/injured, has turned hostile and the petitioners have suffered incarceration of 1 year, 3 months and 11 days, as on today, and trial will take some time to conclude, this Court deems it fit and appropriate to grant the concession of regular bail to the petitioners, during the pendency of trial. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**. The petitioners are ordered to be released on bail, on furnishing of their bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

21. However, it is clarified that if in future, the petitioners are

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.

A photocopy of this order be placed on the file of the connected case.

March 13, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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