

**CRM-M-62494-2023****1****IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH****CRM-M-62494-2023****Date of decision : May 13, 2024**

Daljit Singh @ Dallu

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Mitul Singh Rana, Advocate, for the petitioner
Mr. Akshay Kumar, AAG, Punjab

KULDEEP TIWARI,J. (ORAL)

1. Through the instant petition filed under Section 439 Cr.P.C. the petitioner, who was arrested in the instant case on 18.3.2022, prays for grant of regular bail in case FIR No.21 dated 28.2.2022, under Sections 302,201 IPC, registered at Police Station Mukerian, District Hoshiarpur.

ALLEGATIONS AGAINST THE PETITIONER

2. The instant FIR was registered on the statement made by Sukhwinder Singh and the relevant extract is read as under:-

“Stated that his son Satwinder Singh @ Sona aged about 27 years, used to work as a hard labourer. On 26.2.2022, he was sleeping in his house. At around 4 o'clock morning, his son got a call from some one and he got up and went from home and did not return back.

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The complainant came to know that on 26.2.2022, around 3.30 am, his son was seen roaming near Pandori Road, Emma Mangat, who was searched but was not found. On 28.2.2022, his elder brother Narinderpal Singh went to village Pandori to find out son of the complainant where he met one Pannu with whom his son used to work as a labourer, who told brother of the complainant that his son had taken money from him on 26.2.2022 saying that he had to take clothes and went with some body in a truck. Around 5.30 pm on that day, he came to know that the dead body of a young boy was found in Power House No. 4, Pandori Canal. The police had kept the dead body in mortuary at Civil Hospital, Mukerian, where, he along with others identified it to be of his son Mona. The head and face of his son had been seriously injured and he was killed by unknown person with a blow on the head and the body was thrown into the canal for the purpose of destroying it.”

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

3. Learned counsel for the petitioner submits that the instant case is based on circumstantial evidence, and there is no evidence with the prosecution to connect the present petitioner with the alleged crime. He further submits that the trial has only reached mid way, and the petitioner is behind bars for more than two years, therefore, his further incarceration is nothing but sheer abuse of process of law. He further submits that there are two material witnesses with the prosecution, one is Paramjit Sharma, who is cited as a witness of last seen evidence, whereas the other witness i.e. Harish Kumar is cited as a witness of

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extra judicial confession by the prosecution. He further submits that unfortunately, during the pendency of the trial, Paramjit Sharma, before being examined to support the prosecution has passed away, and Harish Kumar, who is witness of extra judicial confession, has turned hostile

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. On the other hand, learned State counsel has filed the reply to the instant petition, and also vociferously opposed the asked for relief, on the ground, that not only these two witnesses, the learned counsel for the petitioner has relied upon, in his arguments, but there is other circumstantial evidence as well, which is sufficient to connect the petitioner with the present crime. He further submits that the “*Dattar*” with which the petitioner has committed the crime was got recovered during investigation on 20.3.2022 and the “*Dattar*” was sent for FSL examination and as per serological report, the “*Dattar*” was covered with stains of human blood. He further submits, on instructions imparted to him by ASI Sukhdev Singh, that out of 19 witnesses cited by the prosecution, only 9 witnesses have been examined so far and unfortunately, 2 had expired, whereas 8 witnesses are still remaining to be examined.

ANALYSIS

5. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to

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capture an overview of some significant legal propositions.

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.

. 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 ***“Gurbaksh Singh Sibbia v. State of Punjab”, (1980) 2 SCC 565 at 586-588,*** the purpose of granting bail is set out by the Hon’ble Supreme Court 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 Calcutta 476 (479, 480) that the object of bail is to

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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 Allahabad 504 (SB) 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. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which 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



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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.

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29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "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, Vol. 8, page 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 ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh", 1978 AIR (Supreme Court) 429***, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

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“9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice - to the individual involved and society affected.

11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's

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Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once.

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Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal.”

9. This Court on the above analysis has examined the entire case and found that two material witnesses, one of extra judicial confession, and the other of last seen evidence, have not been able to support the case of the prosecution, as one, because of his death, he could not step into the witness box, and the other has turned hostile. Secondly, the issue whether the alleged weapon of offence would connect the present petitioner with the alleged crime, is a moot question and whether the chain of circumstances is complete or not, would be decided by the learned trial court concerned, at appropriate stage of the trial. However, considering the custody period, that he is behind the bars since 18.3.2022, and though one more case is registered against him under the NDPS Act, however, he has already undergone imprisonment in that case.



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10. In view of the above facts and circumstances recorded above, this Court deems it appropriate to extend the benefit of regular bail to the petitioner. Therefore, the present petition is **allowed**.

11. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds 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 case, and is meant for deciding the present petition only.

May 13, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No