

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108 CRM-M-63269-2023 (O&M)
Date of Decision : April 22, 2024

NIRMALA -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. P.K. Bansal, Advocate
for the petitioner.

Mr. Pardeep Bajaj, D.A.G., Punjab.

Mr. V.S. Anand, Advocate
for the complainant.

KULDEEP TIWARI, J. (ORAL)

CRM-16941-2024

1. As prayed for, the instant application is **allowed**. The application and the interim orders, as sought to be placed on record, are taken on record respectively as Annexure P-7, and, as Annexure P-8.

CRM-M-63269-2023

2. Through the instant petition, the petitioner craves for indulgence of this Court for her being enlarged on regular bail, in case FIR No.107 dated 14.09.2023, under Sections 384, 389 of the IPC (Section 306 of the IPC added subsequently), registered at P.S. Cantt. Ferozepur, District Ferozepur.

ALLEGATIONS AGAINST THE PETITIONER

3. The genesis of the prosecution case is embodied in the statement of one Om Parkash (now deceased) (hereinafter referred to as the

‘deceased’), as recorded under Section 164 of the Cr.P.C., before the learned Magistrate concerned. In this statement, he had alleged that, owing to harassment and threats of false implication in a rape case being extended by the present petitioner, he set himself ablaze by pouring petrol over his body. The gist of the allegations, as narrated in paragraph No.4 of the order dated 02.11.2023, whereby, the learned Additional Sessions Judge, Ferozepur, has declined to grant regular bail to the petitioner, is extracted hereinafter:-

“This FIR was registered on the basis of statement under Section 164 Cr.P.C. made by Om Parkash (now deceased) before Ms. Balwinder Kaur Dhaliwal, JMIC, Ferozepur at Anil Baghi Hospital, Ferozepur, to the effect that Nirmal madam (applicant) had been residing with him for the last one year. She had been pressurizing him for purchase of a house in her name, failing which she would involve him in a rape case. On 19.09.2023, she met him and proclaimed that she has filed a rape case against him and that he should pay her Rs.10/15 lacs, otherwise she would proceed further with the said case. On that day, he received a phone call from police station that he will be arrested. He contacted an Advocate, who advised him to go through MLR or FIR. Thereafter, Balvir Singh suggested him to compromise the matter, failing which a rape case would be registered against him. In the night, the applicant through Whatsapp call proclaimed to involve his children in a case. He went to bazaar, where the applicant met him and again proclaimed to put him behind the bars and to involve his children in a case. On 14.09.2023, he went to the shop, where the applicant exchanged hot words with him. He was having petrol with him, which he poured over his body and set him ablaze.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

4. The learned counsel for the petitioner has submitted that, in fact, consequent upon demise of his first wife, the deceased had solemnized his second marriage with the petitioner and they lived together for almost a year. However, since the grownup sons of the deceased were not happy with this marriage and they always pressurized the deceased to abandon the petitioner, therefore, the petitioner left the company of the deceased and

started residing with her mother.

5. The learned counsel for the petitioner has further submitted the petitioner has been falsely implicated in the present case, as she had never, at any point of time, abetted, induced or instigated the deceased. Therefore, no case under Section 306 of the IPC is made out against the petitioner, as the ingredients of abetment are completely lacking. The allegations levelled in the FIR do not carry any truth, rather are flimsy allegations.

6. Lastly, the learned counsel for the petitioner has submitted that, since the petitioner has been languishing behind the bars since 15.09.2023 and there is no likelihood of the trial concluding any time soon, inasmuch as, only 7 prosecution witnesses, out of total 23 witnesses, have been examined so far, therefore, she deserves her being granted the relief of bail, as her prolonged incarceration would not serve any gainful purpose.

7. Moreover, to substantiate his apprehension *qua* delay in conclusion of trial, the learned counsel for the petitioner has drawn attention of this Court towards Annexure P-7, which is an application made by son of the deceased, thereby seeking further investigation under Section 173(8) of the Cr.P.C. By referring to this application, he submits that, in case this application is allowed, there would definitely be delay in conclusion of trial.

SUBMISSIONS OF THE LEARNED STATE COUNSEL, AND, LEARNED COUNSEL FOR THE COMPLAINANT

8. *Per contra*, the learned State counsel, who is assisted by the learned counsel for the complainant, has vociferously opposed the grant of bail to the petitioner, on the ground that, since the petitioner had got prepared her medico-legal examination report, it is sufficient to substantiate the allegations that she was in the process of making a false rape complaint

against the deceased. Therefore, apprehending defamation in the society, the deceased, who was well settled in the mainstream of society, committed suicide.

9. The learned State counsel has, on instructions imparted to him by A.S.I. Satpal Singh, verified that, out of total 23 prosecution witnesses, only 7 witnesses have been examined so far. He also verifies that the petitioner has been behind the bars since 15.09.2023, and that, she is not involved in any other criminal case.

ANALYSIS

10. “*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.

11. 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.

12. 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.”

13. 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.

14. 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.

15. The reason for forming the above inference emanates from the factum that:- (i) uncontestedly, the petitioner has suffered incarceration of

approx. 7 months and has clean antecedents; (ii) there is no likelihood of the trial concluding anytime soon, as only 7 prosecution witnesses, out of total 23 witnesses, have been examined so far, therefore, keeping the petitioner behinds the bars would serve no gainful purpose; (iii) the issue “*whether the act of the petitioner, as alleged in the FIR, tantamounts to abetment or not, and, whether thereby the rigor of Section 306 of the IPC is invited or not*” is a moot question, which is to be adjudicated by the learned trial Court concerned, after appreciation of the evidence, as to be adduced by both the parties.

FINAL ORDER

16. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioners. 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.

17. Anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petitions only.

April 22, 2024
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(KULDEEP TIWARI)
JUDGE

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