

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-64343-2023
Reserved on: 05.01.2024
Date of Pronouncement: 22.01.2024

ANKIT PATEL AND ANR. -PETITIONERS

Versus

STATE OF PUNJAB -RESPONDENT

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Vinod Ghai, Sr. Advocate with
Mr. Jasbir Mor, Advocate
for the petitioners.

Mr. Mohit Chaudhary, A.A.G., Punjab.

KULDEEP TIWARI, J.

1. Through the instant petition, the petitioners, who are allegedly the Manager and the Leaseholder of the Hotel Chandigarh, situated near Omega City, Kharar, S.A.S. Nagar, crave for indulgence of this Court for them being enlarged on regular bail, in case FIR No.312 dated 24.10.2023, under Sections 304 and 506 of the IPC, registered at P.S. City Kharar, District S.A.S. Nagar.

ALLEGATIONS AGAINST THE PETITIONERS

2. Succinctly stated, the allegations against the petitioners are that at about 08:30 p.m., on 29.09.2023, one Shiv Verma, who along with his friend Danish was staying in Room No.106 at Third Floor of the hotel of the petitioners, was attending a telephone call while taking support of door of the said room, however, since the said door was loose, he fell down on the ground floor from the third floor and ultimately, succumbed to his injuries

on 15.10.2023. Therefore, owing to poor maintenance of the hotel premises, the petitioners, being responsible for management of the said hotel, have been alleged to be culpable for death of said Shiv Verma.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

3. The learned senior counsel for the petitioners, in his asking for the hereinabove extracted relief, has made the following submissions:-

(i) *Petitioners have been falsely entangled in the instant FIR, without there being any negligence or fault on their part;*

(ii) *The instant FIR is an outcome of concoction and premeditation, as it has been registered after a considerable delay, inasmuch as, the incident had occurred on 29.09.2023, whereupon, the demise of injured Shiv Verma had occurred on 15.10.2023, however, the FIR was registered on 24.10.2023;*

(iii) *The demise of the deceased, who was staying in the hotel in question for past two years, had occurred owing to his own negligence, as on the fateful day, the deceased consumed liquor with his friends, whereafter, feeling suffocated, they opened the window, however, as an aftermath of intoxication, the deceased accidentally fell down from the window. To substantiate this submission, he refers to medical record(s) of the deceased.*

(iv) *Even if the allegations are taken as gospel truth, yet the mandatory ingredients for invocation of Section 506 of IPC are not satisfied, whereas, offence if any, which may at the most be attracted against the petitioners, is Section 304-A of the IPC, which is a bailable offence and prescribes maximum sentence of*

2 years only.

(v) *Petitioners have undergone incarceration of approx. 1½ months;*

(v) *Investigation is yet pending, therefore, keeping the petitioners behind the bars would serve no purpose.*

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Per contra, the learned State counsel, who is in receipt of advance notice, has placed on record the custody certificates of the petitioners, as issued by the Superintendent, District Jail, Ropar. He has vociferously opposed the grant of regular bail to the petitioners by making the following submissions:-

(i) *The petitioners, who constitute the management of the hotel, are completely responsible for the unfortunate incident, as the incident occurred owing to negligence on their part, inasmuch as, they failed to ensure proper maintenance of the hotel premises/door of the room in question. Had the hotel premises/door of the room, been properly maintained, the deceased would have been alive.*

(ii) *The allegations squarely attract the penal provisions, wherein, the petitioners have been booked.*

(iii) *The column pertaining to history of assault, as exists in the post mortem report of the deceased, corroborates the prosecution story, as it has been clearly recorded therein, that the deceased had fallen from his hotel room on 29.09.2023.*

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 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.

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) the issue whether it was the deceased himself, who had opened the door, under the influence of intoxicants, to inhale fresh air, or, it was lack of proper maintenance of the hotel premises, on the part of the petitioners, which resulted in the deceased falling down from third floor of the hotel room, is yet to be established by the prosecution by adducing cogent evidence during trial; (ii) investigation has not yet been completed, therefore, keeping the petitioner behinds the bars, who have suffered incarceration of approx. 1½ months, would serve no gainful purpose; (iii) the nature of allegations, as attributed to the petitioners, is not so grave, which may debar them from obtaining the concession of bail.

11. However, this Court, at this premature stage, refrains from evincing any opinion upon the argument raised by the learned counsel for the petitioner that offence if any, which may at the most be attracted, is Section 304-A of the IPC.

FINAL ORDER

12. 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 petitioners are 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. It is clarified that anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

22.01.2024
devinder

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No