



CRM-M-44589-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

202

CRM-M-44589-2024

Date of Decision : **January 13, 2025**

SURAJ

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Dheeraj Narula, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. Through the 2nd instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, on the ground that he has suffered incarceration of more than 4 years and 5 months as on today in case FIR No.186 dated 15.6.2020, under Sections 147, 148, 149, 302, 323 IPC, registered at P.S. Sadar Sirsa, District Sirsa, as the first one having been dismissed as withdrawn vide order dated 1.3.2024 with liberty to re-access this Court in case there was an inordinate delay in conclusion of the trial Court proceedings.

2. The instant FIR was registered on a complaint made by one Chameli Devi w/o late Om Parkash. The relevant extract of the same reads as under:-



“That I am the resident of abovesaid address and doing labour work. I have three sons. The eldest one is Parveen, younger to him is Rohtash and the youngest one is Rakesh. My devar Pappu's son Binder Kumar was having love affair with Indro daughter of Naresh Kumar s/o Sant Lal r/o Rangri Khera now at Majdoor Kisan Brick Kiln, Rangri Road Begu who is working with us on the brick kiln. That 5-6 days earlier, Sanjay Kumar s/o Naresh Kumar seen my nephew Binder Kumar and Indro Devi talking with each other. That Sanjay Kumar the brother of Indro Devi starts having a grudge against Binder Kumar. That on 14.06.2020, at 6.00 PM, my nephew son Binder Kumar had gone to one Shop at Village Rangri for his personal work. That with the intention of fighting, Sanjay s/o Naresh alongwith his friends Monu s/o Mange Ram r/o Begu, Desh Raj s/o Parkash r/o Mangala now residing at Kisan Brick Kiln, Jai Pal s/o Chander r/o Hanumangarh (Raj.) now residing at Kisan Brick Kiln, Rangri Road, Begu had gone to Rangri. In the village at Rangri, some altercation took place between my devar's son Binder and Sanjay the brother of Indro and his friends where the people intervened between them. They returned back at Kisan Brick Kiln. Then Monu made a call to Suraj s/o Jagdish alias Jagga r/o Nattar, Jonna s/o unknown r/o Nattar and other 10-15 unknown persons on phone at 10.00 PM who came there by riding on their motorcycles. They all gathered in the house of Desh Raj s/o Parkash r/o Mangala now residing at Kisan Brick Kiln Rangri Road, Begu. They all started abusing Parveen and Binder. That me and my devar son's Binder, my son Parveen and my devar Pappu objected them not to abuse by standing in the street near the house of Desh Raj then Sanjay and Govind ss/o Naresh and their friends Desh Raj, Suraj, Jyona, Monu and their 10-15 unknown persons came out from the house of Desh Raj in anger. Sanjay said we teach a lesson to you for falling in love with my sister Indro. My son Parveen was caught hold by Gobind, Sanjay, Desh Raj, Jyona and Monu and started giving slap and feasts blow and Suraj gave a blow of sharp gupti of iron carrying in his hand on the left side of neck of my son Parveen and other 10-15 unknown persons having in their hands lathis and iron rods surrounded my son Parveen and my son was not allowed to be rescued. Then my devar Pappu intended to save my son Parveen then they inflicted injuries to my devar Pappu. Then we raised a noise Mar Diya Mar Diya. Then the other labours of the brick kiln start coming. Then they fled from there alongwith their respective weapons on motor-cycles. Then me and my nephew after arranging a vehicle, got my son Parveen Shifted to Govt. Hospital, Sirsa. Doctor Sahab declared my son Parveen to be dead.



That Govind, Sanjay, Desh Raj, Jyona, Monu and Suraj and 10-15 unknown persons in collusion with each other killed my son Parveen by inflicting injuries. Legal action be taken against Suraj etc, above said.”

3. In this case, the post-mortem of the deceased was got conducted and cause of death was ascertained as shock due to haemorrhage as a result of injury on neck, which was declared ante-mortem in nature and was sufficient to cause death in the ordinary course of nature and this very injury is attributed to the present petitioner. During investigation, five persons were arrested out of which two persons were declared subsequently juvenile and two persons, namely, Govind Kumar and Desh Raj were granted bail by a co-ordinate Bench of this Court vide Annexures P-2 and P-3 respectively.

4. Though the learned counsel for the petitioner has raised number of issues, but his argument mainly revolved around the days of incarceration as suffered by the petitioner and the stage of the trial. He categorically submitted that as on date, only 24 witnesses out of total 32 cited witnesses, have been examined and now three more accused, namely, Monu, Rogi and Kalu have been arrested by the prosecution agency on dated 16.5.2024 and the supplementary charge-sheet is yet to be filed by the prosecution agency after completion of investigation. He further submits that in case the supplementary charge-sheet is filed, the *de-novo* trial would be started against all the accused persons, therefore, the petitioner has to further face the agony of protracted trial for a long duration.

5. The learned State counsel on the other hand has strongly opposed the grant of regular bail to the petitioner. He drew the attention of this Court towards the contents of the FIR, wherein, the petitioner inflicted injury by giving a blow of sharp *gupti* of iron on the left side of the neck of



Parveen (son of the complainant). He further submits that as per the cause of death, this injury was declared the reason for death of deceased Parveen, therefore, the petitioner does not deserve the concession of regular bail. He, however, after having instructions imparted to him by the IO concerned, fairly conceded that in the instant case on 16.5.2024 three more accused have been arrested and the charge-sheet *qua* them is yet to be filed before the learned trial Court concerned.

ANALYSIS

6. 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 capture an overview of some significant legal propositions.

7. “*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.

8. 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.

9. 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 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 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.”

10. 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 :

“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 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. 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."

11. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law.

12. This is the second regular bail application, the first one was having been dismissed as withdrawn on 1.3.2024, however, liberty was granted to re-access this Court in case there is an ordinate delay in conclusion of the trial Court proceedings. The facts mentioned above clearly reflects that now the *de-novo* trial is required to be initiated on account of arrest of more accused person. The petitioner has already suffered incarceration precisely



of 4 years, 5 months and 22 days as on today, as reflects from the custody certificate filed by the learned State counsel today in the Court, the same is taken on record. The custody certificate further reflects that though the petitioner is stated to be involved in one more case but in that case, he has already completed his sentence.

13. In view of the long incarceration suffered by the petitioner and considering the fact that the trial would take long time, 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.

14. However, it is clarified that if in future, the petitioner is 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.

January 13, 2025
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(KULDEEP TIWARI)
JUDGE

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