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2025.PHHC.014007



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

CRM-M-52271-2024
Date of Decision :**30.01.2025**

FARMAN

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Rakesh Nehra, Sr. Advocate with
Mr. Reetesh Kumar, Advocate and
Mr. Rupender Singh, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

Mr. Gaurav Verma, Advocate,
for the complainant (through V.C.)

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.07, dated 01.01.2023, under Section(s) 302, 201 and 120-B and 34 of the IPC, registered at Police Station Industrial Sector-29, Panipat.

2. Learned Senior counsel for the petitioner submits that this is a second regular bail application, earlier one having been dismissed as withdrawn vide order dated 04.04.2024 (Annexure P-3), with a liberty to re-access this Court, in case there is an inordinate delay in disposal of the

trial.

3. He submits that till date only the examination-in-chief of only 01 prosecution witness, has completed, and thereupon, the prosecution has preferred an application under the provisions of Section 319 of the Cr.P.C. for summoning one another person, i.e. Sibba, as co-accused (wife of the deceased). Therefore, the trial has not even moved an inch after the dismissal of the earlier bail application.

ALLEGATIONS AGAINST THE PRESENT PETITIONER

4. In the instant FIR, three persons were arraigned as accused, whereas Sibba (wife of the deceased-Wasim), was declared innocent during investigation. The present petitioner is one of them, who was arrested way back on 07.01.2023.

5. Initially, the FIR was registered regarding the missing of deceased-Wasim, on the statement made by one Kallan, brother of the deceased, to the effect that his brother is missing since 31.12.2022. Thereupon, after three days of lodging of missing complaint, he filed another complaint raising suspicion over one Sufi Dilshad, to be the person, who committed the murder of his brother-Wasim. The contents of the complaint is extracted hereinafter:-

“It is requested that I Kallan s/o Ikram R/o Mohalla Imam Sahab, Jattal Road, Panipat. On 31.12.2022, my real brother Wasim was called by the Sufi Dilshad S/o Rafiq R/o Kandhla at present at Khel Mohalla Kairana district Shamli, U.P., after that my brother did not return back home, on dt. 01.01.2023, I got registered a FIR about missing of my brother but my brother has not returned back till now. When, we inquired from Sufi Dilshad about my brother then he could not give a satisfactory answer. That I have suspicion that Sufi Dilshad along-with his companions has committed the murder of my brother. That a picture has been received on my brother's mobile from Wasim's phone and in that

picture, about the committing of murder is written. It is requested that legal action be taken against the Sufi Dilshad. That on 31.12.2022, while searching for my brother in Kairana, we saw different footages and in those footages my brother Wasim can be seen going with Sufi Dilshad. SD Kallan.”

6. Thereafter, the investigation was carried out, and Sufi Dilshad the main accused, was arrested on 06.01.2023. During the course of investigation, Sufi Dilshad, got recovered spade (weapon of offence) and one rope, and got demarcated the place of occurrence, and got recovered the dead body of the deceased-Wasim. On 07.01.2023, the present petitioner was arrested upon a disclosure statement suffered by the main accused-Sufi Dilshad. The present petitioner also during the course of investigation, got recovered one motorcycle, which is alleged to be registered in the name of brother of the petitioner.

7. What comes out from a perusal of the entire record, as well as the status report filed by the respondent-State, is that Sufi Dilshad was having illicit relationship with Sibba (wife of the deceased-Wasim), and in order to eliminate her husband (deceased-Wasim), all the accused persons hatched a criminal conspiracy and committed murder of the deceased- Wasim.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER(S)

8. The learned senior counsel for the petitioner submits that the instant case is based upon circumstantial evidence. All the incriminating evidence, which as per the prosecution completes the chain of circumstance, are attributed to the co-accused-Aas Mohammad, as he was the person who got recovered the dead body, weapon of offence (spade

and rope), and also demarcated the place of occurrence on dated 06.01.2023 itself, whereas, the recovery which has been effected from the present petitioner, whether, that connects him with the instant crime, would be a moot question, which is to be decided by the learned trial court concerned at an appropriate stage of the trial.

9. He further submits that all other incriminating evidence were disclosed by the co-accused, one day prior of his arrest, therefore, same disclosure statement cannot be attributed to him.

10. He finally submits that the petitioner is a man of clean antecedents and in the instant case he has suffered incarceration of about more than 2 years as on date, and conclusion of the trial would take a long time.

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

11. *Per contra*, the learned State counsel assisted by learned counsel for the complainant, has vociferously opposed the asked for relief to the present petitioner.

12. Learned counsel for the complainant submits that it was a cold-blooded murder and the petitioner has equally participated by hatching a criminal conspiracy in the murder of deceased-Waism.

13. He further submits that though the face of the present petitioner is not visible in the CCTV footage, however, it came out during the investigation that it was the petitioner, who was last seen in association of the deceased-Wasim.

14. Learned State counsel has filed a custody certificate *qua* the

petitioner today in court, which is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 02 years and 21 days, as on today, and he is not involved in any other criminal case.

15. He, on instructions, imparted to him by the official respondent, submits that out of the total 25 prosecution witnesses cited in the final report, examination-in-chief of only one witnesses has been recorded. Now, the case is pending consideration on the application moved by the prosecution under Section 319 Cr.P.C.

ANALYSIS

16. 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.

17. “*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.

18. 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.

19. 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."

20. 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."

21. 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.

REASONS

22. The reason for forming the above inference emanates from the factum that:- (i) whether the incriminating evidence, i.e. the motorcycle, which was recovered from the present petitioner, would connect him with the instant crime, is a moot question to be adjudicated

by the learned trial court concerned; (ii) the motive for commission of the instant crime is not attributed to the present petitioner; (iii) the petitioner, who has clean antecedents, has suffered incarceration of 02 years and 21 days, as on today; (iv) Out of the total 25 prosecution witnesses, examination-in-chief of only one witnesses has completed yet; (v) no fruitful purpose would be served by keeping the petitioner behind the bars; (vi) trial is not likely to conclude anytime soon.

FINAL ORDER

23. Considering the hereinabove made discussion, without further going into the merits of the instant case, least is prejudice the right of both the parties, this Court deems it fit and 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.

24. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.

25. 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.

26. All pending application(s), if any, also stand **disposed** of accordingly.

30.01.2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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