IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

208

CRM-M-32349-2023 (O&M)
Date of decision: 29.01.2024

RAJ KUMAR ALIAS RAJU

....Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Virender Soni, Advocate
for the petitioner.

Mr. Abhinash Jain, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

CRM-3346-2024

Learned counsel for the petitioner submits that since the main case is listed today, for arguments, therefore, he may be permitted to withdraw the instant application, which is for grant of interim regular bail.

Dismissed as withdrawn.

CRM-M-32349-2023

1. Through the instant (second) petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.249 dated 25.06.2022, under Sections 307, 323, 506 and 34 of IPC, and, under Sections 25 and 27 of the Arms Act, registered at Police Station Sadar Rohtak, District Rohtak.

ALLEGATIONS AGAINST THE PETITIONER

2. The gist of the allegations, against the petitioner, as culled out by the

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Addl. Sessions Judge, Rohtak, while declining the bail application of the petitioner, reads as under:-

> *"The present case is based upon the complaint of Abhishek. He alleged that on 24,6,2022, at abut 11:40 p.m., he reached at his duty. He was called at lane No.5. He reached near the lane No.5. The accused Raju Makroli came to him from lane No.6. He along-with his employees namely Vishal TC, Anil TC, Pardeep Supervisor, Sita Ram Guard and Hitesh TC was present. Accused Raju Makroli started furling/pithy epithets. Accused Raju raised the objection on account of passing the vehicles. He started furling abuses. On resisting the abuses of accused Raju, he intimidated and fished out the pistol from his vehicle and opened fire upon him for the purpose of causing his death. He was closed saved. Thereafter, accused Raju called his another friends Deepak; Ajay; Sombir and Satender. They all young boys grappled with him and complainant was thrashed."*

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

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

> *(i)* ***Petitioner has been falsely implicated in the present case;***
>
> ***(ii) The petitioner was arrested way back on 25.06.2022, and it is case of no injury;***
>
> ***(iii) As on today, no prosecution witness has been examined by the learned trial Court concerned".***
>
> ***(iv) Petitioner has undergone incarceration of about 01 year, 06 months and 29 days;***
>
> ***(v) Though the petitioner is involved in 05 more cases, out of which in 03 cases, he has been acquitted, and in two other cases, he is on regular bail;***

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SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. On the other hand, learned State counsel has placed on record the custody certificate of the petitioner, as issued by the Deputy Superintendent, District Prison (Rohtak), Haryana, a perusal of which reveals that the petitioner has suffered incarceration of about 01 year, 06 months and 29 days, as on today. A perusal of the custody certificate further reveals that in one case, the petitioner is under trial, and in the other case, he has been convicted. Whereas, the sentenced imposed upon him, he has already undergone.

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:-*

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"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

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> *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

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> *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) Petitioner is behind the bars since 25.06.2022; (ii) There is no injury to any person, because of the gun shot fired by the present petitioner; (iii) no fruitful purpose would be served by keeping the petitioner behind the bars, who undergone actual custody of about 01 year, 06 months and 29 days**;** (iv) Till date no prosecution witness has been examined; (V) trial is not likely to conclude anytime soon.

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FINAL ORDER

11. Considering the hereinabove made discussion, 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.

12. 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.

13. All pending application(s) stand disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

29.01.2024
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Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No

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