

HIGH COURT OF PUNJAB & HARYANA**Bench: Justice Kuldeep Tiwari****Date of Decision: 05.01.2024**

CRM-M-64501-2023

RAJENDER YADAV Petitioner**Versus****STATE OF UT CHANDIGARH ...Respondent****Legislation:**

Sections 323, 342, 307, 506, and 34 of the Indian Penal Code (IPC)

Section 173 of the Criminal Procedure Code (Cr.P.C)

Article 21 of the Constitution of India

Subject : Application for regular bail in the case FIR No. 111 dated 04.07.2023.**Headnotes :**

Bail – Grant of Regular Bail – Regular bail granted to petitioner in case FIR No.111 dated 04.07.2023, under Sections 323, 342, 307, 506 and 34 of IPC, registered at Police Station Sector 31, Chandigarh – Petitioner falsely implicated, no injuries attributed to him, and all injuries specifically attributed to co-accused, who is the petitioner's son. [Para 3, 10]

Criminal Jurisprudence – Principle of 'Bail is the Rule and Jail is an Exception' – Emphasis on the fundamental rights enshrined in Article 21 of the Constitution of India and the presumption of innocence – The need for a balance between individual liberty and the interest of society. [Para 5, 7, 8]

Speedy Trial – Rights of a Detained Person – Consideration of the right to a speedy trial in deciding applications for regular bail – Importance of securing the accused's presence for trial without unnecessary detention. [Para 6]

Trial Proceedings – Current Status – No prosecution witnesses examined out of total 14, charges framed on 11.12.2023 – Petitioner has suffered incarceration of more than 6 months, and trial not likely to conclude soon. [Para 4, 10]

Final Order – Release on Bail – Petitioner to be released on bail upon furnishing bail bond and surety bond to the satisfaction of the concerned Chief Judicial Magistrate/trial Court/Duty Magistrate – Observations in order not to affect merits of the trial. [Para 11, 12, 13]

Referred Cases with Citations:

- State of Rajasthan V. Balchand alias Baliay, 1977 AIR 2447, 1978 SCR (1) 535
- Nikesh Tarachand Shah V. Union of India, (2018) 11 SCC 1
- Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565
- Nagendra v. King-Emperor, AIR 1924 Cal 476
- K.N. Joglekar v. Emperor, AIR 1931 All 504
- Emperor v. Hutchinson, AIR 1931 All 356
- Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240
- Gurcharan Singh v. State (Delhi Administration), (1978) 1 SCC 118
- Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010

Representing Advocates:

Mr. Dinesh Maurya, Advocate for the petitioner

Mr. Manish Banswal, PP, UT Chandigarh for the respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present :Mr. Dinesh Maurya, Advocate
for the petitioner.

Mr. Manish Banswal, PP, UT Chandigarh

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.111 dated 04.07.2023, under Sections 323, 342, 307, 506 and 34 of IPC, registered at Police Station Sector 31, Chandigarh.

ALLEGATIONS AGAINST THE PETITIONER

2. The prosecution agency was set to motion, on the statement of one Ramanand Yadav son of Sukhraj Yadav, and the crux of the allegations reads as under:-

"Statement of Ramanand Yadav son of Sukhraj Yadav resident of 1183, 3rd floor, Phase-2, Ramdarbar, Chandigarh age 48 years stated that I am residing at the above mentioned address in a rented accommodation alongwith my son Dhayan Yadav and I work of fiber work at Plot No.313, Phase-2, Ram Darbar Indl. Area and my son Dhayan Yadav also works in fiber work at Plot No 266. Phase 2 Indl. Area and he is unmarried. That on

dated 03.07.2023 at around 9.25 pm, I and my son Dhayam Yadav were present in our room. My relative Rajender Yadav resides along with his wife and son Sarwan on the same floor. Noise of quarrel and abuses started coming from their room. On hearing the noise, I and my son Dhyan Yadav immediately went to their room and saw that Rajender Yadav and his son Sharwan were fighting with each other. When we (father and son) tried to stop them from fighting then Rajindra Yadav and his son Sharwan started abusing and quarreling with us also and at the initial moment of the quarrel, Sharwan started saying that today we will kill both of you father and son and further said that who are you to come between our quarrel and while saying so, Sharwan picked up a knife lying in the room near him and his father Rajender held the hands of my son and Sharwan said to my son Dhyan that today you and your son have not to be spared alive and Sharwan stabbed my son Dhyan several times on his neck and chest with the same knife. When I tried to free my son, these two father and son confined me and my son in the room and during the ensuing quarrel, Sharwan also stabbed me on my left arm with the same knife. I and my son had with great difficulty came out of the room and saved our lives. On seeing our condition, someone called number 112 on phone and the PCR vehicle arrived at the spot and took me and my son Dhyan Yadav to GMCH 32 CHD for treatment in the PCR vehicle. Where I and my son are undergoing treatment. Rajindra Yadav and his son Shraavan have attacked me and my son with the intention of killing us. Legal action be taken against Rajendra Yadav and his son Sharwan. Statement got recorded and heard it word by word, which is correct. R.T.I. Ramanand Yadav Attested ASI Balbir Singh 3649/CP PS 31 CHD."

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) No injury whatsoever is attributed to the present petitioner;***
- (iii) The injuries are specifically attributed to the co-accused, who is happened to be the son of the present petitioner;***
- (iv) As per the allegation, there was a quarrel between the petitioner accused and his son, who is a co-accused in the instant petition, to whom all the injuries are attributed”.***
- (v) The present petitioner is behind the bars since 04.07.2023.***
- (vi) The final report under Section 173 Cr.P.C has already been filed, and has been committed to the Court of Sessions for trial.***
- (vii) The petitioner has undergone incarceration of more than 06 months.***

SUBMISSIONS OF THE LEARNED STATE COUNSEL

4. Learned State counsel on instructions, from ASI Parminder Singh, submits that the role attributed to the present petitioner is that he caught hold of the victim, and which facilitated the main accused to cause injuries. Learned State counsel further submits that the final report under Section 173 Cr.P.C has been filed by the concerned Station House Officer, and thereupon, the charges have been framed on 11.12.2023. Out of the total 14 prosecution witnesses, no prosecution witnesses has been examined till date. The learned State counsel has placed on record the custody certificate issued by the Superintendent Model Jail, Chandigarh. The same is taken on record. A perusal of the custody certificate reveals that the petitioner has suffered incarceration of 06 months and 02 days as on today, and the petitioner is not involved in any other criminal case.

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 perusal of the above allegations reveals that it was Sarwan, who under the heat of anger, caused stabbed injuries to the son of the complainant as well as to the complainant; (ii) Considering the role of the present petitioner as well as the days of incarceration suffered by the present petitioner; (iii) The stage of trial, which is at initial stage, no fruitful purpose would be served by keeping the petitioner behind the bars, who has already undergone actual custody of more than 06 months; (iv) trial is not likely to conclude anytime soon.

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 meant for deciding the present petition only.

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

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