

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Kuldeep Tiwari****Date of Decision: 25 January 2024**

Case No.: CRM-M-13422-2023

MOHD. RAFIQ ...PETITIONER**VERSUS****STATE OF PUNJAB ...RESPONDENT****Legislation:**

Sections 302, 201, 34 of the Indian Penal Code (IPC)

Article 21 of the Constitution of India

Subject: Bail petition in a case involving alleged murder and conspiracy, with the petitioner accused of assisting in the murder of Nazo Khaton.**Headnotes:**

Regular Bail – Grant of Bail in FIR No. 122, dated 20.06.2020, under Sections 302, 201, 34 IPC – Petitioner seeks regular bail – No specific allegations against petitioner in FIR – Based on circumstantial evidence and no recovery from petitioner – Incarceration of over 3 years – Regular bail granted. [Paras 1, 3, 16]

Circumstantial Evidence – Reliance on circumstantial evidence and extra-judicial confession in case against petitioner – No direct evidence implicating petitioner in the crime. [Paras 6, 7, 16]

Length of Incarceration – Consideration of over 3 years of incarceration for the petitioner – Impact on decision to grant bail. [Paras 9, 15, 16]

Legal Principles for Bail – Reference to Supreme Court judgments emphasizing 'Bail is the Rule and Jail is an Exception' – Consideration of the individual's liberty and societal interest in bail decisions – Application of these principles in granting bail to the petitioner. [Paras 10-13, 16]

Future Conduct and Bail Conditions – Clarity on cancellation of bail for future similar offences – Mention that observations in the order do not affect the merits of the trial. [Para 17]

Final Order – Bail granted due to lack of specific allegations in FIR against the petitioner, circumstantial nature of evidence, no recovery from the petitioner, and prolonged incarceration of 3 years, 7 months, and 3 days – Release on furnishing bail and surety bond [Para 16].

Referred Cases:

- 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
- 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. Farukh Abdullah for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

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.122, dated 20.06.2020, under Sections 302, 201, 34 of the IPC, registered at Police Station Jodhewal, District Ludhiana.

ALLEGATIONS AGAINST THE PETITIONER

2. In the instant matter the FIR was registered on a complaint made by one Mohd.Doud son of Babu Jaan, the contents of which, reads as under:-

“Statement of Mohammad Doud son of Babu Jan Mia resident of Gau Sandwara, Post Office Madhurpur District Seetamari Bihar age 59 years Mobile No. 70615-16735, 85780-54784, 73708- 35382, stated that I along with my family am living at the above mentioned address. I have 6 children. Eldest is daughter namely Nazo Khatoon whose marriage was solemnized about 18 years back with Mohammad Mehfooj Alam son of Mohammad Islam resident of Naanpur District Sitamari Bihar in the year 2002. The age of my daughter Nazo is 37 years. My daughter Nazo Khatoon and son-in-law Mohammad Mehfooj Alam for the last about 14/15 years along with their children are residing at Ludhiana, who have four children, have two sons and two daughters. On 14.06.2020 at about 11.00 hrs Mohammad Rafiq friend of my son-in-law has told through phone that your daughter Nazo Khatoon today in the morning at about 04.00 A.M. has died. Upon which I on 19.06.2020 when I along with my son Mohammad Ujale at about 06.00 P.M. reached at the house of my son-in-law Mohammad Mehfooj at Gali No.1 Harwinder Nagar, Fanda Road Ludhiana then I enquired from my son-in-law that how my daughter Nazo has died. Who further started arguing with me and started saying that I have burned Nazo Khatoon. Further I said him that why you have not waited for us before buried my daughter Nazo, why and how you alone buried her. That earlier also so many times Mohammad Mehfooj Alam has gave beatings to my daughter Nazo. So many times we have made him understand. Upon which, in the night I have enquired from the Moahlla. I have fully assured that my son-in-law Mohammad Mehfooj son of Mohammad Islam resident of Naanpur District Sitamari Bihar now resident of Gali No.1 Harwinder Nagar Fanda Road near Satsang Ghar Ludhiana with the connivance of his friend Mohammad Rafiq son of Mohammad Munif Nada resident of village Ram Nagar Inder Tehsil Janakpur Road Kukri District Sitamari Bihar now resident of Gali No.1 Harwinder Nagar Fanda Road Near Satsang Ghar Ludhiana have killed my daughter Nazo on 14.06.2020 in the night at about 04:00 AM and with the intention

for misappropriating the dead body have buried it some where. I was going to inform you, you met us at Shivpuri Chowk near Wanjli Hotel Noorwala Road Ludhiana. I have got recorded my statement to you, heard which is to be correct. Legal action may be taken against the aforesaid persons. Sd/- LTI Mohammad Daud, Statement Corroborated by Mohammad Ujale (In English) Attested Arashpreet Kaur Grewal SI/25/RRT Station House Officer Police Station Basti Jodhewal Ludhiana Dated 20.06.2020.”

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. Learned counsel for the petitioner submits that a perusal of the FIR reveals that it was the present petitioner, who had informed the complainant about the death of Nazo Khatoon, who is the wife of coaccused Mohd.Mehfooz Alam. Although suspicion has been raised by the complainant against the present petitioner, however, no specific allegation has been attributed to him.
4. He further submits that the petitioner has suffered incarceration of more than 03 years.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

5. On the other hand, learned State counsel opposes the grant of regular bail to the petitioner.
6. Learned State counsel submits that the status report, as filed by the State, reveals that the incriminating evidence, as collected during investigation, was extra-judicial confession, which was alleged to be confessed by the co-accused alongwith the present petitioner before one Tamana Ansari, whose statement was recorded under Section 161 Cr.P.C.
7. There is one more witness as cited by the prosecution, who is Ketabul Rehman, who according to the prosecution, had overheard the petitioner and co-accused while planning for the committing murder of Nazo Khatoon.
8. As per the reply, charges against the petitioner have been framed on 26.11.2021 and now the trial is at the stage of prosecution evidence.
9. Custody certificate *qua* the petitioner has been filed by the learned State counsel today in Court, which is taken on record. It depicts that the petitioner has suffered incarceration of 03 years 07 months and 03 days as on today, and, he is not involved in any other criminal case.

ANALYSIS

10. *“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.

11. 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.

12. 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 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.”

13. 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.

14. 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.

15. The reason for forming the above inference emanates from the factum that:-
(i) the final report has been filed way back on dated 17.09.2020, and the charges have been framed on 26.11.2021; (ii) further the custody certificate makes revelations that he has faced incarceration of 3 years, 7 months 03 days as on today.

FINAL ORDER

16. Considering the fact that there is no specific allegations in the FIR against the petitioner and the whole case is based upon circumstantial evidence, and, no recovery has been effected from the present petitioner, and the petitioner has already suffered incarceration of 03 years, 07 months and 03 days, 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.

17. 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.

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