

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1276-2021
Reserved on: 03.12.2021
Pronounced on:13.12.2021

Sandeep Kumar @ Lala @ Lal Chand ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Sumit Gupta, Additional Advocate General, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
51	24.02.2019	Nagal Chaudhary, District Mahindergarh	396, 379-B, 302, 201 & 34 of Indian Penal Code

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 CrPC seeking bail.
2. Although the petitione is silent about the criminal history but learned counsel for the petitioner, on instructions, submits that there is no other case pending against the petitioner except one case under Section 174-A IPC which was registered on his being declared proclaimed offender. The status report also does not mention any criminal antecedents of the accused.
3. It is for the first time that the petitioner has approached this Court for regular bail.
4. A brief narration of allegations relevant in deciding the present petition is that on 24.02.2019, the complainant informed the Incharge of Police Post Nizampur, in the following terms:-

He stated that he belongs to Rajasthan and he is doing agriculture work. It is stated that on 23.02.2019 at 5 pm, son of his uncle named Kailash Chand went out of the house on his bike by saying that he has to attend a marriage. On 24.02.2019 i.e the date of information, at 3 am in the morning the family received a phone call that Kailash is lying near Panchnota Road in an injured

condition. It was further informed that Kailash has received serious injuries on his head and feet and he has been sent to Government PHC Hospital at Nangal Chaudhry through ambulance and from there, he was referred to PGIMS Rohtak. In the morning, he received another information that Kailash Chand had succumbed due to the injuries. After that they reached the place of occurrence at village Panchnota (Haryana) and from there they reached PGIMS Rohtak. Then they came to know that 5-6 persons gave severe beatings to Kailash Chand in the intervening night of 23/24.02.2019. They also snatched his ATM Card, wallet and mobile phone. However, his bike was left at the spot. Based on this information, the police registered FIR captioned above.

5. Ld. Counsel for the petitioner prays for grant of bail on the ground of parity by drawing the attention of this Court to Annexures P-10 and P-11, vide which the co-accused Mahender (in CRM-M-54497-2019) and Ashok Kumar & anr. (in CRM-M-27043-2020) have been granted bail by this Court.

6. Learned counsel for the State could not refer to any portion of the evidence to establish that the case of the petitioner is on different pedestal than that of the petitioner-Mahender (in CRM-M-54497-2019). While opposing the bail, learned State counsel submits that the petitioner is involved in a very heinous offence, although the co-accused have been granted bail, but the petitioner was declared proclaimed offender and as such, he is not entitled to such bail.

REASONING:

7. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating

witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In GudikantiNarasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

8. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

9. The petitioner has annexed the summary of final report under Section 173(8) Cr.P.C. (Annexure P-8). As per the said summary, the police suspected Ashok @ Manoj, Gautam @ Shampoo, Mahinder and Anil and arrested them. Subsequently, based on the disclosure statement, the police recovered sticks, mobile phones etc. and the bikes used by them. The police also found involvement of Mukesh @ Kheru and Lal Chand @ Lala (present petitioner). The petitioner was already declared proclaimed offender and a case under Section 174-A IPC was registered against him. Subsequently, the police was able to nab the petitioner on 17.03.2020. Thus although the police report has been filed, however the petitioner instead of annexing the complete report of 173 Cr.P.C., chose to file only the summary of such report.

I have gone through the orders passed by the Co-ordinate Bench of this Court in CRM-M-54497-2019 and CRM-M-27043-2020. Needless to say that the case of the petitioner is not different than the cases of the persons to whom the Courts had granted bail. Given above, on the grounds of parity, the petitioner is entitled for grant of bail. It is relevant to mention the portion of the order dated 18.08.2020, passed in CRM-M-54497-2019, which is extracted as follows:-

“Having considered the submissions made by counsel for the parties and keeping in view the custody period of the petitioner as also the fact that only three witnesses, who are police officials, remained to be examined, chances of the petitioner influencing them would be rare and further the trial being not proceeded with because of prevailing pandemic, the present petition is allowed. The petitioner is directed to be released on bail to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, Narnaul.”

It is also relevant to extract the portion of the judgment dated 16.09.2020, passed in CRM-M-27043-2020, which is to the following effect:-

“The factum with regard to the petitioners being not named in the FIR and no recovery having been effected from the petitioners except for the alleged recovery of mobile phone of deceased-Kailash Chand but from whom, the said aspect out of the two petitioners, is not verifiable, the fact remains that the trial is not proceeding because of the prevailing pandemic, although except for three prosecution witnesses, all evidence has been led by the prosecution. The fact that the three witnesses are police officials, the chances of the petitioner influencing them in any manner, do not arise. Keeping in view the custody period of the petitioners, the trial not proceeding further because of the prevailing pandemic and co-accused, who is similarly placed as the petitioners, has been granted the concession of bail vide order dated 18.08.2020 passed by this Court, the present petition is allowed.”

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

11. Provided the accused is not required in any other case, the petitioner shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. Ten thousand (INR 10,000/-), and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Special Judge/Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Ilaqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that in case the petitioners-accused fail to appear in Court, then such

sureties are capable to produce the petitioners-accused before the Court, keeping in mind the jurisprudence behind the sureties, which is to secure the presence of the accused.

12. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

13. The petitioner to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

14. Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A Cr.P.C.

15. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

16. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

17. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within 30 days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case.

18. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

19. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

20. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

21. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

22. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

23. The Court believes that the accused shall reciprocate the bail through desirable behavior.

24. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

13.12. 2021
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Whether speaking/reasoned: Yes
Whether reportable: No