

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

CRM-M-4405 of 2021 (O&M)

Reserved on : 30.11.2021

Pronounced on : 03.12.2021

Raju Bhaiya

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Lupil Gupta, Advocate for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
226	18.05.2020	Jhabal, District Tarn Taran.	302, 506, 188, 269, 270, 201, 148 and 149 of IPC, 1860 and Sections 25, 27, 54 and 59 of Arms Act, 1959.

The petitioner, who is incarcerated since 19.05.2020, has come up before this Court seeking regular bail.

2. In Para 21 of the bail application, learned counsel for the petitioner declares that the petitioner is not involved in any other criminal case except the FIR mentioned above.

3. Briefly, the allegations against the petitioner are that the complainant informed the police that he is practicing as Ayurvedic Doctor. He along with his brother owns 10 acres of land in the village, Out of the said land, they had sold 3-1/2 acres of land to Karaj Singh. After that, they had entered into an agreement regarding remaining land in favour of Karaj Singh in December, 2016. Karaj Singh on one pretext or the other kept on extending the dates of agreement. After that, both the brothers had given the land to Karaj Singh on contract for cultivation but for the last about three years, neither he paid Theka amount nor the due amount of the agreement. Consequently, they asked him not to cultivate

the land. Subsequently, Karaj Singh had moved an application against the complainant and his brother in Police Station Jhabal. On 17.05.2020, at about 4.00 clock in the evening, the complainant and his brother came to know that Karaj Singh had again started cultivating the land. On this, the complainant, his wife, son and brother reached the spot. At that point of time, white colour Bolero stopped there, from which Karaj Singh, who was armed with 12 bore gun, Rashpal Singh @ Daula armed with pistol, Harjit Kaur wife of Heera Singh, empty handed, Ranjit Kaur wife of Karaj Singh and Ranjit Kaur wife of Gurdev Singh, got down. Raju Bhaiya (petitioner) also reached there on a Tractor along with 2-3 unknown persons. After alighting from the Car, mother of Karaj Singh raised a lalkara saying Karaj fire shot towards them and they would not be spared. As such, gun shot was fired which hit the son of the complainant. After that, they raised hue and cry and the accused persons ran away along with their weapons. The complainant party took the injured to the hospital, however he expired. Based on this information, the police registered the FIR captioned above.

4. Learned counsel for the petitioner has argued that the accused/petitioner had no role in the alleged occurrence. He did not use the fire arms.

5. On the contrary, it has been contended on behalf of the State of Punjab, that the petitioner has been arraigned as an accused with the aid of Section 148 and 149 of IPC, 1860 and he is equally responsible for the act. It was also argued that the petitioner did not offer any explanation why did he accompany Karaj Singh to the spot. It was further contended by the State that as per the custody certificate, the petitioner is not a permanent resident of the State of Punjab and it would be difficult to procure his presence.

6. Learned Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

7. On the contrary, the contention on behalf of the State is that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

REASONING:

8. 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 *Gudikanti Narasimhulu 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.

9. 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.

10. As per the contents of the FIR, it is amply clear that two groups of people had reached at the spot. One came in Bolero, from which Karaj Singh got down and as such, the occupants of Bolero were likely to be aware that Karaj Singh was carrying a 12 bore gun. On the contrary, the petitioner came on a Tractor. Although, a perusal of the FIR, prima facie reveals that both the vehicles reached

examination. Be that as it may, it is a common knowledge that the speed of the Tractor is much less in comparison to the speed of Bolero. It would imply that the Tractor started earlier than the Bolero. Given this, the petitioner is most likely to be not aware that Karaj Singh would be armed with a gun. Although, these analyses are for the purpose of deciding this bail application because this is subject to investigation and evidence led in the trial. However, for the purpose of deciding this bail application, it is difficult to assume that the petitioner-Raju Bhaiya would be aware of the intention of Karaj Singh and other occupants of Bolero. Given above, the petitioner makes out a case for bail.

As far as the second contention on behalf of the State that it would be difficult to secure the presence of the petitioner/accused because he is not a native of Punjab, it is worthwhile to mention that a large number of migrant labourers work in the fields in Punjab. In any case, the petitioner is a citizen of India and it cannot be assumed at this stage that he would not attend the trial. However, it is clarified that in case the petitioner fails to turn up and does not attend the trial then on this ground alone, this bail would be liable to be cancelled.

11. Without commenting on the case's merits, given the investigation stage, the period of incarceration already undergone, and the circumstances peculiar to this case, the petitioners make a case for release on bail.

12. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of Cr.P.C., 1973.

13. 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 learned trial Court having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Illaqa 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.

14. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

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 petitioners also promise to appear before the higher Court in terms of Section 437-A Cr.P.C.

16. The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

17. 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.

18. Given the gravity of accusations and the heinous nature of the offence, 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.

19. During the trial's pendency, if the petitioners repeat 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.

20. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

21. In case the petitioners find 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 petitioners 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.

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

23. 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.

24. In return for the protection from incarceration, the Court believes that the petitioners-accused shall also reciprocate through desirable behavior.

25. In the facts and circumstances peculiar to this case, the petition is allowed in the terms mentioned above.

{ANOOP CHITKARA}
JUDGE

03rd day of December, 2021
Manpreet

Whether speaking/reasoned :	Yes/ No
Whether reportable	Yes /No