

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARHCRM-M No.28762 of 2021
Reserved on November 23, 2021
Pronounced on:December 02, 2021

Sajan Singh alias Sajjan Singh

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr.Sidhant Vermani, Advocate for the petitioner(s).

Mr. Sidakmeet Singh Sandhu, AAG, Punjab

Mr. Himanshu Puri, Advocate for the complainant.

ANOOP CHITKARA J. (ORAL)

FIR No.	Dated	Police Station	Sections
117	01.05.2021	Lopoke Amritsar Rural	302/148/149 IPC and Sections 25/27 of the Arms Act, 1959

The petitioner apprehending arrest in the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In Para 10 of the bail application, the petitioner declares no criminal history. 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 anticipatory bail.

4. A brief narration of allegations relevant in deciding the present petition is that on 01.05.2021, the complainant informed the police that Nirvail Singh fired a shot from his 12-bore rifle upon his brother due to which he died. It was informed that the complainant alongwith his brothers are agriculturists. Their neighbour-Nirvail Singh would often take his tractor-trolley through their field despite availability of the government passage. Hardeep Singh-brother of the complainant had on countless occasions asked him not to do it. On 01.05.2021 at about 6:30/7:00 A.M. when the complainant alongwith his brother-Hardeep Singh son of Karam Singh, Rajdeep Kaur wife of Hardeep Singh were present in their house, then Nirvail Singh alongwith Paramjit Singh @ Pamma armed with datar, Parvez Singh armed with sword, Robanpreet, Jobapreet Singh armed with dandas

and Sajjan Singh-the present petitioner empty handed alongwith two other unidentified persons came outside their house and raised *lalkara* and hurled abuses at them. They proclaimed that they would teach a lesson to Hardeep Singh. After that Nirvail Singh fired a gun shot from his 12-bore rifle which he was holding. The gun shot hit Hardeep Singh and its pellets penetrated his chest, arms and abdomen. He fell down. After that Nirvail Singh fired another shot in the air and fled away from the spot. Subsequently, Hardeep Singh succumbed to his shot injuries. Based on such allegations, the police registered FIR as captioned above.

5. Learned counsel for the petitioner argued that even as per the FIR, the petitioner-Sajjan Singh was unarmed. He further argued that firing was an individual act of Nirvail Singh and there is no evidence that the petitioner had any common intention or that the assembly at that time was unlawful. To substantiate his arguments, he submits that the genesis of occurrence has been suppressed and the complainant has not stated the true story. He further contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

6. Learned counsel for the State has stringently opposed the bail on the grounds that the petitioner was member of unlawful assembly and is liable to be punished with the aid of Section 149 IPC.

REASONING:

7. The petitioner is a first offender and thus deserves a chance to reform and course correct.

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. A perusal of the FIR reveals that it was not the petitioner who used to drive his tractor through the fields of the complainant party. The FIR further reveals that petitioner was unarmed. Undoubtably, petitioner arraigned with the addition of Sections 148/149 IPC determination of being a member of unlawful assembly. However, whether the assembly was unlawful and whether the petitioner was member of that unlawful assembly would need appreciation of entire evidence. At this stage, the specific averments in the FIR are that petitioner was unarmed would entitle him to grant the benefit of bail.

10. 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 elaborate 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. In *Sumit Mehta v. State of N.C.T. of Delhi*, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

11. Given the nature of allegations and for the reasons mentioned above, no pre-trial incarceration is required. Without commenting on the case's merits and in the facts and circumstances peculiar to this case, the petitioner makes a case for release on 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.

12. In the event of arrest, 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 with one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Investigator. Before accepting the surety, the Attesting Officer must satisfy that in case the accused fails to appear in Court, then such surety is capable to produce the accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

13. The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number linked with 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 to the concerned Court.

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

15. 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.

16. 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.

17. Till the completion of 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 and 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 . He shall also stay one km. away from the house of the complainant.

18. 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.

19. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner shall not enter within a radius of one kilometer from the victim's home, till the completion of the trial. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or to cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (Crl.) 458; and Aparna Bhatt v. State of Madhya Pradesh, 2021 SCC Online SC 230.

20. 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.

21. 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 vernacular and if not feasible, in Hindi.

22. 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.

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

24. The SHO of the concerned Police Station or the Investigating Officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, within two days. In case the victim notices stalking or any violation of this order, she may either inform the SHO of the concerned Police Station or the Trial Court or even to this Court.

25. 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.

26. In return for the protection from incarceration, the Court believes that the

accused shall also reciprocate through desirable behavior.

27. *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.

(ANOOP CHITKARA)
JUDGE

December 02, 2021

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Whether speaking/reasoned

Yes/~~No~~

Whether reportable

~~Yes~~/No