

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-35838-2020

Date of Decision:-03.11.2021

Krishan @ Baba.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Sullar, Advocate for the Petitioner.

Mr. Rajat Gautam, DAG Haryana.

(THROUGH VIDEO CONFERENCE)

ANOOP CHITKARA, J.(ORAL)

FIR No.	Dated	Police Station	Sections
363	06.07.2018	City Jind, District Jind	341, 342, 392, 506 & 34 IPC and Sections 25 of Arms Act

The petitioner, incarcerated upon his arrest for committing robbery, has come up before this Court seeking regular bail under Section 439 Cr.PC.

2. Para 16 of the bail petition reveals that the petitioner has seven cases registered against him, out of which he has already got bail in five cases.

3. Briefly, the allegations against the petitioners are on 5.7.2018 at 9.20 PM when complainant was present in his office of finance then three young boys who were armed with weapons entered in the room. They put them in the gunny bags and after threatening them took keys and ran away with Rs.6,96,000/-. Based on these allegations, the Police registered the FIR mentioned above.

4. Ld. Counsel for the petitioners contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

5. 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.

6. 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.

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 *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.

8. The co-ordinate Bench of this Court in CRM-M-16631 of 2020 has granted regular bail to one of the co-accused. Case of the petitioner is similar to him. The only difference is that he has criminal history for which adequate conditions can also be put.

9. An analysis of entire evidence does not justify further incarceration of the accused, nor is going to achieve any significant purpose. 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, if not required in any other case.

10. Given the above reasoning, the Court is granting bail to the petitioners, 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 CrPC, 1973.

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

13. The petitioners to execute a bond for attendance to the concerned Court(s). 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 CrPC.

14. 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.

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 of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

16. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioners shall not be called before 8 AM and shall be let off before 5 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

17. 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.

18. The petitioner shall, under no circumstances, contact, call, text, remarks, stalk, stare, make any gestures, show or express any unusual or inappropriate, verbal or otherwise objectionable behavior, to or in front of the victim, either physically or through any other mode, or roam around the victim's home, and shall also stay away from the victim and her house.

19. During the trial's pendency, if the petitioner 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 CrPC.

20. In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioners undertake to pay all the expenditure (only the principal amount without interest) that the Government(s) might incur to produce them before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioners' failure to reimburse shall entitle the trial Court to order the transfer of money from the petitioners' bank account(s). However, this

recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioners alone, and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and that voyage was not for any other purpose/function what so ever.

21. 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.
22. 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.
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. 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.
25. In return for the protection from incarceration, the Court believes that the petitioners-accused shall also reciprocate through desirable behavior.
26. In the facts and circumstances peculiar to this case, the petition is allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

November 03, 2021
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No