

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43213-2021
Date of Decision : 02.11.2021

Har Kishan Kamboj ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

Mr. Satbir Singh Gill, Advocate
for the complainant.

ANOOP CHITKARA, J.(ORAL)

FIR No.	Dated	Police Station	Sections
338	06.09.2021	Civil Lines Sirsa, District Sirsa.	323, 324 and 326 of IPC, 1860.

The petitioner, is apprehending arrest came up before this Court under Section 438 Cr.P.C., seeking anticipatory bail.

2. In Para 21 of the bail application, the petitioner declares criminal history of the accused which is mentioned below :-

- i) FIR No.259/21, under Sections 323 and 324 of IPC registered at P.S. Sadar, Sirsa;
- ii) FIR No.155/20, under Sections 307 of IPC and Sections 25/54/59 of Arms Act, registered at P.S. Sadar, Sirsa.

3. Without going further into the details of the allegations, prima facie based on such complaint, the Police registered the FIR mentioned above.

4. Ld. Counsel for the petitioner contends that apart from the FIRs mentioned above, the petitioner has no criminal record and during interim bail, the petitioner joined the investigation. Thus, custodial investigation would serve no purpose whatsoever and incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

5. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

REASONING:

6. 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.

7. 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. 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.

8. The bail application of the petitioner has been dismissed by the learned Additional Sessions Judge, Sirsa on the ground of gravity of offence. However, I am not in agreement with the reasoning given by the Sessions Court, while rejecting the bail application.

9. Vide order dated 13.10.2021, the petitioner was given interim anticipatory bail and was directed to join the investigation as and when called for.

10. Learned State counsel has opposed the grant of bail to the petitioner on the ground that the petitioner is a habitual offender and two more FIRs are pending against him. On the contrary, learned counsel for the petitioner submits that the other two FIRs are also from the same controversy.

11. Be that as it may, given the nature of allegations, no incarceration is required in this case.

12. Without commenting on the case's merits and the circumstances peculiar to this case, the petitioner makes a case for release on bail.

13. 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.

14. The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of **Rs. Ten thousand (INR 10,000/-)**, and shall furnish two sureties of **Rs. Twenty-five thousand (INR 25,000/-) each**, to the satisfaction of the Investigator. Before accepting the sureties, the Attesting Officer must satisfy that in case the accused fails to appear in Court, then such sureties are 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.

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

a) The petitioner to execute a bond for attendance in 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 petitioner also promises to appear before the higher Court in terms of Section 437-A Cr.P.C.

b) 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.

c) 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.

d) 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 petitioner 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.

16. 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.

17. 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.

18. 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.

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

20. 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.

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

22. The petitioner shall surrender all firearms, if any within a period of 30 days from today.

23. *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.*

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

(ANOOP CHITKARA)
JUDGE

November 02, 2021
Manpreet

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No