207 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46478-2021
Decided on 10.11.2021

Onkar Singh and others ...Petitioners

Versus

State of Punjab …Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. TPS Bhatti, Advocate and
Mr. Naresh Kumar Kaushik, Advocate for the petitioners.

Mr Sidakmit Singh Sandhu, AAG, Punjab.

Mr. Vineet, Advocate for the complainant.

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THROUGH VIDEO CONFERENCING

ANOOP CHITKARA, J.

The petitioners, apprehending arrest in DDR No.38 dated 04.10.2021 (Annexure P-1) registered under Sections 323/324/452/354/427/148/149 of Indian Penal Code in FIR No.75 dated 04.10.2021 (Annexure P-2) registered under Sections 323/324/325/427/148/149 IPC at Police Station Jhander, District Amritsar Rural, came up before this Court under Section 438 Cr.P.C., seeking anticipatory bail.

2. In Para 9 of the bail application, the petitioners declare having no criminal history. Ld. Counsel for the bail petitioners states on instructions that the petitioners have no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed was more than three years.

3. Briefly, the allegations against the petitioners are that on 04.10.2021 at 9.40 pm, the police officials recorded the statement of the complainant under Section 154 Cr.P.C. He stated that on 26.09.2021 at 6 pm, when he along with his family members was in courtyard of their house, then Paramjit Kaur and her husband Gurmeet Singh came outside and started abusing them on the grounds that the gate, which the complainant was installing, would obstruct the street. In the meantime, the petitioners also came carrying *datar,* raised *lalkara* and said that they will teach them a lesson. After that, they assaulted the complainants. The other details are not necessary for the purpose of deciding the present petition.

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4. Ld. Counsel for the petitioners contends that the custodial investigation would serve no purpose whatsoever and incarceration before the proof of guilt would cause grave injustice to the petitioners and family. Learned counsel further argued that the injury was not attributed to the petitioners.

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.

6. Learned counsel for the complainant had opposed the bail on the ground that there is an apprehension of mere causing the violence.

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,

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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. 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.

9. It was the complainant parties' conduct of alleged obstruction of street by installing a gate which led to an incident. Furthermore, nature of injuries and the fact that the petitioners do not have criminal antecedents, the petitioners are entitled to anticipatory bail, subject to the conditions that the petitioners shall stay one kilometer away from the place of victim for two months. Keeping in view the nature of allegations and other facts and circumstances of this case, the interim order dated 03.11.2021 is made absolute.

10. This Court feels that one opportunity be afforded to the petitioners to course correct and behave in a civilized manner.

11. Given the nature of allegations, no pre-trial incarceration is required. Without commenting on the case's merits and the 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 Cr.P.C., 1973.

12. 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 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 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.

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

14. The petitioners to execute a bond for attendance in the concerned Court(s).

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Once the trial begins, the petitioners 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.

15. 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 petitioners shall immediately and not later than 30 days from such modification, intimate about the change of residential address, phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

16. The petitioners 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. The petitioners 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. The petitioners 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.

20. During the trial's pendency, if the petitioners repeat or commit 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

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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 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 accused shall also reciprocate through desirable behavior.

26. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners 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

10.11. 2021
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Whether speaking/reasoned **Yes**/~~No~~
Whether reportable ~~Yes~~/**No**

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