

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48229 of 2021
Reserved on : 25.11.2021
Pronounced on : 10.12.2021

Manender @ Monu ...Petitioner

Versus

State of Haryana ...Respondent

CORAM : HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Deepak Kundu, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
158	22.04.2021	Urban Estate, District Rohtak.	307, 323 and 34 of IPC, 1860 (Sections 452 of IPC and Section 25 of Arms Act, 1959 added later on).

1. The petitioner, incarcerated upon his arrest in FIR captioned above, has come up before this Court seeking regular bail.
2. In Para 11 of the bail petition, learned counsel for the petitioner declares that the petitioner has no criminal antecedents except the FIR mentioned above.
3. On 22.04.2021, the police officials received a phone call from the police post that one Hari Om Manchanda resident of Rohtak has been admitted in the hospital on account of receiving the injuries. After that the investigator reached the hospital. On enquiry from the doctor regarding recording of the statement of injured, the doctor declared him unfit for making a statement. Consequently, the investigator met wife of the injured and recorded her statement under Section 154 of Cr.P.C. She stated that her husband is a doctor and run his own clinic. At about 3.45 p.m. when he reached the gate of house then three persons came on a motorcycle and started beating her husband. On account of such beatings to her husband, blood smeared all over the place. The wife further stated that she did not know any of those persons but she had managed to notice all of them while they were assaulting her husband. She got her husband admitted in the hospital. Based on such statement, the police

registered the FIR mentioned above. The investigation commenced and the investigator obtained CCTV footage. Based on the evidence collected through CCTV footage, the investigator nabbed Rahul (A-1), Manender @ Monu (petitioner A-2) and Satender @ Situ (A-3). The police was allegedly able to arrest the accused on 23.04.2021. Subsequently, the police recovered the motorcycle which was used in the offence and the accused were arrested after conducting their Covid tests.

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

5. On the contrary, learned State counsel has opposed the bail and on instructions from ASI Rajender, he submits that challan has been presented, however, complainant is yet to be examined. The other 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:

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.

8. A perusal of the MLC reveals that the injured received very serious injuries on all parts of the body. Given the nature of assault, the assailants were fully armed and had come with an intention to cause such injuries. During the investigation, Satender Singh @ Situ also made a disclosure statement under Section 27 of the Indian Evidence Act, which led to the discovery of the knife used in the commission of offence. Although, the police has recorded the statement of the injured under Section 161 of Cr.P.C. during the investigation but there is no mention of test identification parade (TIP) and also no mention of the FSL report and CCTV footage. The allegations against the present petitioner are based upon the CCTV footage. The substantive evidence against the petitioner would have been his identification in CCTV footage and also by way of TIP, if conducted. In the absence of test identification parade, the stage of identification would come only when the trial commence. The recovery of the alleged weapon is not attributed to the present petitioner because it was recovered at the instance of Satender Singh @ Situ. Given above, the nature of evidence collected by the prosecution and the quality of the investigation, further incarceration is not justified at the present stage as far as the petitioner is concerned, also in light of the fact that the present petitioner is a first time offender with no criminal antecedents.

9. Without commenting on the case's merits, given the investigation stage, the period of incarceration already undergone, nature of allegations and the circumstances peculiar to this case mentioned above, the petitioners makes out a case for release on bail.

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 Cr.P.C., 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 Chief Judicial Magistrate/trial Court having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Illaqa 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 Cr.P.C.

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

16. 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.

17. 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 Cr.P.C.

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 behaviour, 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 1 km. from the radius of residence of the victim.

19. 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.

20. 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.

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

22. 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.

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

24. *There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioner can download this order along with the case status from the official web page of this Court and attest it to be a true copy. The Prosecutor shall also verify the downloaded copy by comparing it from the official web page. In case the attesting officer or the Court wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

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

{ANOOP CHITKARA}
JUDGE

10th day of December, 2021
Manpreet

Whether speaking/reasoned	No
Whether reportable	No