

CRM-M-49115-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49115-2021
Reserved on: 29.11.2021
Date of Decision: 03.12.2021

Dharamraj

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rakesh Khatana, Advocate for
Mr. Neeraj Saini, Advocate
For the petitioner.

Mr. Manish Bansal, DAG, Haryana.

(Through Video Conferencing)

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0239	31.07.2020	Badshahpur, Gurugram	147, 148, 149, 323, 325, 341, 342 & 427 of Indian Penal Code (Sections 364, 186 & 353 IPC added later on)

The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Sections 438(2) & 482 of CrPC seeking pre-arrest bail.

2. In Para 26 of the bail petition, 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 31.07.2020 the informant told the police that when he was transporting buffalo meat and reached at the red light of Sector 5-6, then 4-5 motorcycles forcibly tried to stop his vehicle. However he did not stop and

turned the truck towards the truck market at Masjid Gurugram. At that place the aforesaid boys surrounded his vehicle and broke the window glass. Subsequently, they beat him with the sticks/dandas. They took him back to Shona along with the vehicle towards the jail road. Based on this narration, the police registered an FIR mentioned above. In the investigation, the petitioner was arraigned as an accused however he could not be arrested. After completion of the investigation the police launched the prosecution by filing report under Section 173(2) Cr.P.C. The petitioner filed an application for bail before the Additional Sessions Judge, Gurugram, however vide order dated 22.10.2021 (Annexure P-10), the same was dismissed. One of the reasons for dismissal of bail was that the proceedings have been initiated against the petitioner for declaring him as proclaimed offender.

5. Ld. Counsel for the petitioner 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 State counsel has opposed the petition on the grounds that anticipatory bail cannot be granted to a person who has been declared as proclaimed offender.

REASONING:

7. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, given the directions passed in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, (Para 13), wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

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. The petitioner was declared as a proclaimed offender vide order dated 05.02.2021. After that he applied for his bail in the month of October 2021. The petitioner has offered explanation in para 3 which reads as under:-

“3. That after the investigation some people were arrested and all the accused statements has been recorded. There is mentioned of a boy named Kally son of Dharamraj resident of Rithhoj in their statements, Neither the name of the petitioner mentioned in the FIR nor in all the accused disclosure

statements (Annexures P/2 to P/8). But the respondent is trying to make him Kalu son of Dharamraj because of petitioner belongs to the same place where the some accused belongs. Respondent is trying to falsely implicated to the petitioner in abovementioned case. The petitioner name is Dharamraj son of Shri Deviram, not Kalu son of Dharamraj. That the copies of the English translation of the disclosure statements of accused namely Mahesh dated 02.08.2020, Pardeep Yadav dated 02.08.2020, Monu dated 03.08.2020, Anesh Dated 03.08.2020, Naveen 06.08.2020 and Sunil Kumar dated 03.08.2020 along with his modified statement dated 7.08.2020 is attached herewith as (Annexures P/2 to P/8) and the copy of the Aadhaar Card No.308879273870 is attached herewith as (Annexure P/9) ”

10. A perusal of the above explanation reveals that it was not a case where the petitioner was intentionally avoiding his appearance in the Court. Consequently, the judicial precedents referred to by the trial Court would not apply in the facts and circumstances of the present case. The nature of allegations in the FIR also do not required is custodial investigation or pre-trial incarceration. Given above, the petitioner makes a case for the bail.

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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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23. 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.

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

25. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have been passed also for the newly added section(s). However, if the newly inserted sections prescribe a sentence that exceeds the maximum sentence prescribed in the sections mentioned above, then the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

26. 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.

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

28. As far as prayer for seeking quashing of proclamation proceedings, is concerned, the petitioner has not annexed the same with the petition and as such, this Court is not adjudicating on the said proceedings. It is clarified that it shall be open for the petitioner to challenge the same by filing any application/petition, in accordance with law.

29. *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 03, 2021
anju rani

Whether speaking/reasoned
Whether reportable

Yes/~~No~~
~~Yes~~/No