

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-49444 of 2021
Reserved on December 14, 2021
Pronounced on :December 23, 2021

Ajay SharmaPetitioner(s)

Vs.

State of U.T., ChandigarhRespondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Karan Singh, Advocate for the petitioner(s).
Mr. Amit Kumar Goyal, Addl.P.P., U.T., Chandigarh.

ANOOP CHITKARA J. (ORAL)

FIR No.	Dated	Police Station	Sections
112	15.06.2021	Manimajra, U.T., Chandigarh	364-A, 34 IPC Sections 120-B

The petitioner arrested in the FIR captioned above had come up before this Court under Section 439 CrPC seeking regular bail

2. As per para No.21 of the bail petition, the petitioner has no criminal antecedents.

3. Brief facts of the case are that on 15.06.2021, the complainant informed the police about kidnapping of his son, who is 15 years of age. The complainant told the police that as a daily routine, his son alongwith his friends-Yuvraj and Anmesh went for cycling. After some time, he received a phone call from an unknown number and the person told that his son has been kidnapped. The person asked a ransom of Rs.50 lacs. It was further that in case the complainant fails to give the ransom money, they shall kill his son. After that a number of phone calls were made from the same mobile number demanding money. In one of such calls, they told that they have kidnapped his son from the *Fatak*. On this the complainant alongwith his daughter went to the *Fatak*, where friends of his son met them and told them that one car stopped in front of them and three boys came out. They forced his son to sit in the car. Based on this, the Police registered the FIR as mentioned above.

4. As per the affidavit, Special Teams were constituted to trace the kidnappers. Due to pressure of the police, the kidnappers released the boy unharmed and without taking ransom. It also reveals from the scrutiny of CCTV footage that the said vehicle was stopped, serial number was known and the registered owner was also found. On enquiry from the registered owner, the police came to know about the persons in possession of the vehicle and nabbed one accused namely-Mukesh. The investigation revealed that the said Mukesh was working as a recovery agent for RBI Bank. He alongwith accused Ajay Sharma, Pankaj Gupta and Vishal Gupta hatched a conspiracy to kidnap the son of the complainant. As a part of the conspiracy, the boy was kidnapped. The police came to know about the involvement of the petitioner and he was also arrested.

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

6. On the contrary, the contention on behalf of the State is that the petitioner is the kingpin and master mind of this kidnapping. Further police had recovered a pistol used in the crime and one number plate from him. If this Court is inclined to grant bail, then such a bond must be subject to very stringent 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 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.

9. Although the police had recovered a fake number plate from petitioner but given the age of the petitioner, which is just 26 years and the fact that he has already been in custody for almost 06 months and also keeping in view the fact that the accused persons had released the boy unharmed and without taking any money, which would show either change of heart or inability to bear the police pressure, the Court is inclined to grant an opportunity.

10. 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.

11. 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 CrPC, 1973.

12. Provided the accused is not required in any other case, 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 shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Trial Court/Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Ilaqa Magistrate/Duty 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.

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

14. The petitioner 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.

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 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.

16. 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.

17. 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. During the trial's pendency, if the petitioners 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.

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 petitioner(s) 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 petitioners-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 petitioners 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

December 23, 2021
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Whether speaking/reasoned:	√ Yes/No
Whether reportable:	√ Yes/No