

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49584 of 2021
Reserved on : 07.12.2021
Pronounced on : 15.12.2021

Mukeem @ Mukim ...Petitioner

Versus

State of Haryana ...Respondent

CORAM : HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Yashveer Kharb, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
250	02.04.2021	Quilla, District Panipat.	120-B, 148, 149, 201 and 302 of IPC, 1860 and Sections 25 and 54 of Arms Act, 1959.

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 02.04.2021, the complainant made a written complaint to SHO, Police Station Quilla, Panipat in the following terms :-

He stated that on 17.03.2021, a quarrel had taken place between his son Shiv Kumar with labourer Abhinav and Anubhav. The challan was filed against his son in the police station. On 02.04.2021, his son went to join his duty at about 10.00 a.m. to look after the work of contractor. At about 11.00 a.m., Abhinav and Anubhav along with their associates namely, Ashish, Sanu and Bolt all residents of Dhoop Singh Nagar, Panipat armed with their respective weapons revolvers and knives attacked his son and killed him. Based on this information, the police registered the FIR captioned above.
4. Ld. Counsel for the petitioner contends that the petitioner is in custody since 19.04.2021. He 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. 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. Status report by way of an affidavit of Deputy Superintendent of Police, Traffic, Panipat has been filed by the State in which it has been mentioned that in the post-mortem, the cause of death was multiple stabbed wounds. During the investigation, the police found the involvement of Abhinav and Anubhav who were accompanied by Arjun Kumar, Adhesh and three more boys. On 07.04.2021, the investigator arrested Arjun Kumar and Adesh and they made their disclosure statements. On 15.04.2021, Anubhav and Abhinav surrendered before the Court. During their interrogation, another disclosure statement they got demarcated and named Naveet, Mobin @ Monu, Ashu, Ravi Saini, Sanu son of Ram Mehar, Sonu son of Noorhasan, Arjun and Adhesh. The police also recovered pistols and knives etc. during the investigation.

9. I have gone through the entire status report and it reveals that 11 persons were prosecuted including the petitioner herein who has been arraigned as A-11. However, the evidence collected by the prosecution against the petitioner is not sufficient to deny him the concession of bail at this stage. The disclosure statements have two portions. One of which led to discovery of weapons and the second involving the present petitioner may not be considered as a discovery of an act. The substantial evidence is against the large number of accused and as far as the present petitioner is concerned, his name surfaced only on the basis of disclosure statement made by Ashu. In the disclosure statement Ashu, Naveet, Ravi Saini and even Mukeen brother of Noshad was also called there. It was also stated that they were empty handed.

10. The petitioner is a boy who is aged just 18 years. He has been arraigned as an accused based upon the disclosure statement of the co-accused without any incriminating evidence against him. Furthermore, as per Para 11 of the petition, there is no criminal antecedents against the petitioner and this fact has not been refuted by the learned State counsel. Undoubtedly, there is sufficient evidence against the large number of accused but as far as the petitioner is concerned, the evidence collected by the police so far does not warrant further pre trial incarceration.

11. 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 petitioner makes out a case for release on bail.

12. 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.

13. 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 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 petitioner-accused fail to appear in Court, then such sureties are capable to produce the petitioner-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

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

15. 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 petitioner also promised to appear before the higher Court in terms of Section 437-A Cr.P.C.

16. 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.

17. 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.

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. 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.

20. 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.

21. Any Advocate for the petitioner and the Officer in whose presence the petitioner 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 petitioner 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 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.

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 petitioner-accused shall also reciprocate through desirable behavior.

26. *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.*

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

{ANOOP CHITKARA}
JUDGE

15th day of December, 2021
Manpreet

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No