

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50735-2021
Reserved on 09.12.2021
Pronounced on: 13.12.2021

Prateek Sharma @ Suraj and another ...Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ram Karan Agnihotri, Advocate
For the petitioners.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
524	10.09.2021	Sector 32-33 Karnal, District Karnal	379-A & 201 IPC(Sections 323 & 379-B IPC added and Section 379-A deleted later on)

1. The petitioners, incarcerated upon their arrest in the FIR captioned above, came up before this Court under Section 439 CrPC seeking bail.
2. In Para 11 of the bail application, the petitioners declare 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 petitioners have approached this Court for bail.
4. A brief narration of allegations relevant in deciding the present petition is that on 10.09.2021, the complainant made a written complaint to SHO of the above mentioned Police Station in the following terms:-

He stated that in the intervening night of 09/10.09.2021 at T-point of Phusgarh, two young boys hired his e-rickshaw and asked him to take them to Balaji Mandir. After that when he asked them to get down from the rickshaw, they became angry and gave him beatings and snatched away his mobile phone along with his e-rickshaw. Based on this, the police registered FIR captioned above.
5. Ld. Counsel for the petitioners contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause

an irreversible injustice to the petitioners and family.

6. The contention on behalf of the State, on instructions from SI Sham Sunder, is that the investigation is complete, challan has been filed and the trial is yet to commence.

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 petitioners who seek enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioners 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. As per para 7 of the petition, petitioner No.1 was arrested on 10.09.2021 and petitioner No.2 was arrested on 17.09.2021. Given above, the petitioners are in custody for around three months.

10. The petitioners are first time offender and thus deserve an opportunity to course correct.

11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a case for 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.

12. Provided the accused is not required in any other case, 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 Special Judge/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. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioners along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioners shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

14. The petitioners to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall

be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

15. 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 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. 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.

16. 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.

17. 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 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. 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 any language that the petitioners understand.

19. 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.

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

21. 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.

22. The Court believes that the accused shall reciprocate the bail through desirable behavior.

23. *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 in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

13.12. 2021
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No