

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52199-2021
Reserved on 17.12.2021
Pronounced on :23.12.2021

Ajruddin ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
476	13.10.2018	Sector 17-18, Gurugram	379-A, 34 IPC, 1860

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 CrPC seeking bail.

2. Para 12 of the bail petition and status report mentions the following criminal history:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	467	07.10.2018	379-B, 342, 34 IPC	Sector 17/18 Gurugram
2.	455	03.10.2018	379-B, 34 IPC	Sector 17/18 Gurugram
3.	299	2018	379-B, 342, 34 IPC	Sector 17/18 Gurugram
4.	406	2021	174-A IPC	Shivaji Nagar Gurugram
5.	408	2021	174-A	Shivaji Nagar, Gurugram

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 13.10.2018, the complainant visited the police station and handover a written complaint in which he stated that he works in Gurugram. On 12.10.2018 at about 9:30 p.m., when he was seeking transportation for his home, at that time a Wagon-R car came. Four boys were sitting in it. The complainant asked that if

they are going to Dhaula Kuan can they drop him. They agreed. Two boys sitting on the rear seat snatched his wallet, ATM, Voter ID card, driving licence, PAN Card and Aadhar Card and cash also. They took office ID Card as well. They also asked ATM pin and withdraw Rs.40,000/- from ATM. They turned him out of the car and ran away. During investigation, the police found involvement of the present petitioner and he was arrested.

5. Ld. Counsel for the petitioner argues that the co-accused Ismile on whose identification the petitioner was arrayed as an accused, already stands acquitted. He further states that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

6. The contention on behalf of the State is that the petitioner is a habitual offender and four more cases are pending against him. He further states that the petitioner was evading arrest and in case he is released on bail, then it will be difficult to arrest the petitioner again.

REASONING:

7. Although the petitioner was named by co-accused Ismile and was declared as Proclaimed offender, the said co-accused stands acquitted by the trial Court during trial due to non-identification. It was allegedly on his statement that the petitioner was named. Other co-accused Rashid was also declared proclaimed offender by the trial Court. Given the facts and circumstances of the case, this petition is allowed.

8. 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.

9. 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.

10. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles. The facts that Police did not conduct Test Identification Parade of the accused and acquittal of the co-accused are relevant. Given above, the previous criminal history of the petitioner would not come in the way for getting bail.

11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes 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 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 Special Judge/Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Ilqa 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 petitioner 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 petitioner 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 petitioner 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. 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.

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. 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.

18. Till the completion of the 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.

19. The petitioner shall, within thirty days of release from prison, procure a smartphone, and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall keep the phone location/GPS always on the "ON" mode. Whenever the Investigating officer asks to share the location, then the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O.

20. 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. The petitioner shall bring it to the notice of the concerned court seized of the subsequent application about earlier caution 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.

21. 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 any language that the petitioner understands.

22. 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.

23. 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.

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

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

(ANOOP CHITKARA)
JUDGE

December 23, 2021
sonia arora

Whether speaking/reasoned:	Yes
Whether reportable:	No