

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-375 of 2022
Reserved on January 12, 2022
Pronounced on :January 14, 2022

MunniPetitioner

Vs.

State of HaryanaRespondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Akshay Kumar Jindal, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

Mr. Mazlish Khan, Advocate
for the complainant

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
134	21.06.2021	City Nuh, District Nuh	388, 389, 506, 379B, 120-B IPC, 1860 and Section 25 of the Arms Act, 1959 (Section 420, 467, 468, IPC, 1860 added later on)

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.12 of the bail petition, the petitioner has following
criminal antecedents.

FIR No.	Dated	Police Station	Sections	Remarks
566	19.09.2016	City Palwal, District Palwal	384, 506, 120-B IPC	Already granted anticipatory bail on 21.08.2017
131	03.03.2016	Sohna	398 and 401 IPC	Acquitted
118	23.04.2020	Sadar Tauru	147, 148, 323, 341, 506, 324 IPC	-
127	2016	Sohna	120-B, 34, 342, 363, 365 IPC	Acquitted

3. Brief facts of the case are that on 21.06.2021, the complainant gave a written complaint to the police Station for taking action against Munni, Jakir alias Mota, Nishi and Sanjida (the present petitioner). The complainant informed the police that around one and half months earlier, he received a phone call from No.8814951623, a girl spoke, who later on turned out to be Nishi (A3). Initially on one or two occasions, complainant refused to talk to the said girl but she kept on calling. Later on he started talking to her. After talking for some time, Nishi (A3) kept on pressurizing the complainant to meet her. Subsequently, the complainant met her on 15.06.2021 at 6:00 p.m. at Nuh Bus Stand. Nishi met the complainant and told him that she has to go to Bhiwandi and asked him to drop her on his bike. Subsequently, on such allurement the complainant agreed to drop her on his bike. After crossing the valley, Nishi told the informant go via Silkho and when they reached near Railway Line, Village Gunawat, which was an isolated place, Nishi told the informant to perform sex with her. She further warned in case he does not do coitus, she will raise cries and will gather the people. However, the informant didn't indulge in any bad act upon her and then Nishi herself ripped her clothes and called Jakir and Munni at the spot. Jakir pointed a *katta* on the informant's temple and snatched 4000-5000/- that he was carrying. Further they asked the informant to give Rs.10 lacs otherwise they would involve him in false case under section 376 IPC. The informant made an excuse to them that he has to arrange the money by going home. On this assurance, they let him go. On 16.06.2021, Munni made a phone call to the informant demanding the money. Even Sanjida, the present petitioner was also involved in the conspiracy with the other three accused. On 17.06.2021, Munni visited his house and met his wife, who was unaware about the said episode. On 18.06.2021, Munni again visited their house and offered to compromise the matter provided they pay sum of Rs.10 lacs. On 20.06.2021, the three accused called the informant and demanded Rs.4.5 lacs and threatened him, if the amount is not paid to them, they will register a false case against the informant. Faced with this situation, the informant thought it prudent to involve the police. The informant further told that he had audio and video recording of the entire incident and Munni is the gang leader and doing the business of honey trapping. He further told that Munni would be coming to receive the money and she can be nabbed. Based on this, the police registered the above-mentioned FIR. During the investigation, the police arrested the present petitioner-Sanjidha.

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

5. Learned State counsel argued 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 elaborate 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. Given the investigation stage, the period of incarceration already undergone, and the circumstances peculiar to this case, the petitioner make a case for release on bail. While granting bail to the co-accused Sanjida, this Court in Paragraph No.8 held as follows:-

“A perusal of the FIR reveals that main culprits are Nishi, Munni and Zakir. The allegations against the present petitioner-Sanjidha are on suspicious ground not corroborated with any substantial evidence. Although the act has been committed by other three persons is very heinous but the kind of evidence which is available against the present petitioner would not justify her further pre-trial incarceration coupled with the fact that the petitioner has no criminal antecedents, she makes out a case for regular bail.”

9. In the present case, this Court without going into the merits of the case is considering the fact that the petitioner has been in custody for sufficient period of time and has a baby of 2 years, who due to such tender age has not been vaccinated. Due to the present Covid-19 Pandemic, which is likely to peak sometime in February 2022, the possibility of baby catching the infection cannot be ruled out. There is no justification to continue such a young child in the jail simply because her mother is an accused.

10. 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.

11. 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 Illaqa Magistrate/Duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that in case the petitioner(s)-accused fail to appear in Court, then such sureties are capable to produce the petitioner(s)-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

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

13. 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(s) also promise to appear before the higher Court in terms of Section 437-A CrPC.

14. 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.

15. 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.

16. 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.

17. During the trial's pendency, if the petitioner(s) 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.

18. Any Advocate for the petitioner(s) and the Officer in whose presence the petitioner(s) put signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

19. 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 petitioner(s) 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 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. In return for the protection from incarceration, the Court believes that the petitioner(s)-accused shall also reciprocate through desirable behavior.

23. *There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioner(s) 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.*

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

(ANOOP CHITKARA)
JUDGE

January 14, 2022
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Whether speaking/reasoned:	√ Yes/No
Whether reportable:	√ Yes/No