

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2305-2022
Reserved on: 31.03.2022
Pronounced on: 12.05.2022

Parvinder Malik ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vinod Ghai, Sr. Advocate with
Mr. Edward Augustine George, Advocate
for the petitioner

Mr. Rajat Gautam, DAG, Haryana.

Mr. Shamsheer Singh, Advocate
For the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
257	18.03.2021	Kharkhoda, District Sonipat	148, 302, 452, 149, 120-B IPC and 25, 27 of Arms Act

1. A woman, aged 42 years, in custody since March 24, 2021, upon her arrest in the FIR captioned above, for being part of the criminal conspiracy, the furtherance of which one person was shot dead, and another fired up at the same time, in a court complex, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 20 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	191	18.03.2021	307, 120-B IPC	City, District Sonipat

2(a) On 18.03.2021, Anita-wife of the deceased-Krishna made a statement to the SHO, Police Station Kharkhoda in the following terms:-

“ She stated that 8-10 people came outside their house at around 1:00 p.m. At that time her husband Sh. Krishna was present at home. Those people asked him by calling him ‘ *Tau*’ and on this her husband opened the gate. Subsequently, those people came inside and shot at her husband. When her husband went inside the house then

they again continued to fire bullets hit various parts of his body. Resultantly, he died. The complainant-Anita suspected that out of the old enmity with Muniya, he alongwith his friends and brother Barjesh alongwith his co-accomplices Ramkaran, Naresh, Jasbir, Ramesh Pahalwan, Rajesh Sarkari, Neetu Thanda, Pauna, Aashish, Vikky, Parvinder Kaur wife of Satyawar, Sonu Malik, Advocate Shashi Parkash, Bharti wife of Sonu Malik, mother of Muniya and Anand murdered her husband in conspiracy. The complainant-Anita while narrating the incident in FIR did not mention that out of those 8-10 persons a woman was also among them. The case of the prosecution is that the petitioner who is wife of Satyawar is also the conspirator and the murder was committed as a part of larger conspiracy.

3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail, Ld. counsel representing the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

5. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

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.

7. Given the accused's being a woman, and other factors peculiar to this case, it may

be appropriate to afford the petitioner a final opportunity to course-correct. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail. Furthermore, a prima facie perusal of paragraph 12 of the bail petition reveals sufficient grounds for granting bail.

8. As per Status Report filed by Additional Superintendent of Police, Gohana, the petitioner was arrested on 24.03.2021 and he made disclosure statement before the police and admitted her guilt. The relevant paragraphs are reproduced as under: -

"5. that on 24.03.2021, accused Anand son of Kartar and Parvinder Malik wife of satyawan malik were arrested in the present case and on interrogation, they suffered their respective disclosure statements and admitted their guilt. in her disclosure statement, petitioner smt. parvinder malik disclosed that in the year 2016, her husband satyawan alongwith accused ram karan had purchased land near general hospital. sonipat and with regard to the said land. there was some dispute between ram karan and sandeep barwasani and due to their relationship with ram karan, the group of sandeep barwasani was nursing grudge against her husband Satyawan and other family members. She further disclosed that in the year 2016. Ram Karan alongwith his companions had murdered Sandeep Barwasani and his associates and in the said case, her husband Satyawan Malik was also arrested. After having grudge against her husband regarding murder of Sandeep Barwasani and the above mentioned property dispute, Ajay @Bittu with his companions had shot dead her husband on 11.12.2017 at Shila Bypass, Rohtak. regarding which FIR No.516 of 2017, under Section 302 IPC was registered in Police Station Urban Estate, Rohtak. With regard to the said dispute, the remaining persons from the group of Sandeep Barwasani namely Rupender & Nanha etc. had attacked her nephew Sonu Malik on 06.09.2020 with an intention to kill him, who (Sonu Malik) is residing with his family in Gurugram since a long, due to which she was fearing for the safety and security of her family. She further disclosed that she came to know that Krishan, who was father of said Ajay & Bittu was preparing some new boys by giving money for attacking her family, due to which they asked their relative namely Ram Karan to eliminate Krishan. father of said Ajay @ Bittu and for that purpose, her brother Gurmail Pinku and brother in law (Dewar) namely Anand went to village Baiyanpur for talking with Ram Karan and also met with him at their residence at Rohtak. She further disclosed that said Krishan has been got murdered by their relative Ram Karan, but only Ram Karan can disclosed as to through whom, he got murdered Krishan and she is not aware about the same. Similar facts were also disclosed by accused Anand in his disclosure statement, the true translated copy of which is annexed herewith as Annexure R2.

6 That on 10.04.2021, accused Naresh @ Nesha son of Ramphal, resident of village Baiyanpur. Sonipat was arrested in the present case, who on interrogation suffered disclosure statement and admitted his guilt and also disclosed that he alongwith his brother Ram Karan, Jasbir, Constable Mahesh, companions of his brother Ram Karan namely Monu, resident of Lalheri, Manish resident of Kharkhoda, Sunil Kalanaur, Mohit resident of Kalanaur. Pawan Pona resident of Khubru, Priyavart Foji resident of Garhi Sisana and the names of other persons can be disclosed by Ram Karan only, had hatched the conspiracy to commit murder of Ajay @ Bittu in police custody with the help of Constable Mahesh and that of father of Ajay @ Bittu namely Krishan and in execution of the said conspiracy, on 18.03.2021, his brother Ram Karan handed over weapon to Constable Mahesh for the murder of Ajay @ Bittu and thereafter, Ajay @Bittu was fired upon by Constable Mahesh when he was produced in Sonipat Courts from Rohtak jail and thereafter, as per the conspiracy of his brother Ram Karan, the goons sent by his brother Ram Karan had murdered father of Ajay @ Bittu namely Krishan by entering into his house by firing gunshots on 30.03.2021, case property was sent to FSL Madhuban.

7. That on 15.04.2021, accused Manish son of Naresh and Sunil Bhundu were arrested in the present case and on interrogation, they suffered disclosure statements and admitted their guilt. Accused Manish disclosed that at the time of occurrence, he had also entered the house of deceased Krishan and he took away the DVR of CCTV camera installed in the house of deceased and handed over the same to accused Ram Karan, In pursuance of his disclosure statement, accused Manish got demarcated the place of occurrence. On 19.05.2021, scaled site plan of the place of occurrence was got prepared. Statements of witnesses were recorded and other relevant evidence was also collected and after completion of investigation, final report under Section 173 Cr.P.C. was submitted in the Court against accused Smt. Parvinder Malik. Anand, Naresh Nesha, Manish and Sunil Bhundu on 17.06.2021.

8. That thereafter on 02.07.2021, accused Anuj and Sachin were arrested in the present case, who on interrogation suffered their respective disclosure statements and admitted their guilt. Accused Anuj disclosed that he was having one country made pistol 315 bore and 5 live cartridges and fired at deceased Krishan. Similarly, accused Sachin also disclosed that at the time of occurrence, he was having one country made pistol 9 mm and fired at deceased. On 06.07.2021, accused Monu Lalheri was arrested in this case, who on interrogation suffered disclosure statement and admitted his guilt and also disclosed that he had fired shots at deceased Krishan with 9 mm pistol On 30.07.2021, accused Ram Karan and Constable Mahesh were arrested in this case and on interrogation, they both suffered disclosure statements and admitted their guilt. The true translated copy of disclosure statement of accused Ram Karan is annexed herewith as Annexure-R3. On 11.08.2021, accused Amit Mita was arrested in this case and on interrogation, he suffered disclosure statement and admitted his guilt and also disclosed that he was present at the spot and at the time of occurrence, he was standing at the gate of house of deceased for keeping watch. On 13.08.2021, accused Anmol was arrested in this case and on interrogation, he suffered disclosure statement and admitted his guilt and disclosed that he was involved in the murder of Krishan and he had fired gunshot at Krishan at deceased Krishan with 12 bore pistol, which was handed over by him to accused Monu Lalheri after the occurrence. In pursuance of his disclosure statement, he got demarcated the place of occurrence. During investigation, several persons were joined in the investigation and facts of the case were verified by Inspector Ravinder. Incharge CIA-1 Staff, Sonipat and Assistant Superintendent of Police, Gohana. Sonipat and from the available evidence and verification of facts, no incriminating evidence was found to effect the arrest of Aarti Malik wife of Sonu Malik, despite that she was joined in the investigation and said Aarti Malik was found innocent in the present case. It is further submitted that from the available evidence, which has surfaced on the file till now and verification of facts by higher officers, so far sufficient evidence has not come on file to effect the arrest of Kamla wife of Hari Kishan, Savita wife of Vikas Dudhiya. Sonu Malik, Ramesh Pehlwan, Brijesh son of Hari Kishan, Rajesh Sarkari, Narender @ Nitu. Pawan @ Pona. Ashish son of Maha Singh, Shashi Parkash Advocate, Sunil Sangwan, Vinod Modi, Anil son of Sumer in the present case despite. their being Joined in the investigation of this case and during the course of investigation, any incriminating evidence is found against them after the arrest of other co-accused. investigating agency shall act in accordance with law. Statements of witnesses were recorded and other relevant evidence was also collected and after completion of investigation, supplementary challan against accused Anuj, Sachinn @ China, Monu Lalheri, Ram Karan, Constable Mahesh. Amit Mita and Anmol was submitted in the Court on 29.09.2021 and after framing of charges against all the accused vide order dated 16.12.2021. now the said case against accused Smt. Parvinder Malik, Anand, Naresh Nesha. Manish. Sunil @ Bhundu. Anuj. Sachin China. Monu Lalheri, Ram Karan, Constable Mahesh. Amit @ Mita and Anmol is pending in the Court of learned Additional Sessions Judge. Sonipat for 29.03.2022 for prosecution evidence. There are total 45 witnesses in the present case. out of whom, one PW namely Dr. Sandeep has already been examined.

9. *That there are direct and specific allegations and sufficient evidence against the petitioner to connect her with the commission of above mentioned crime. She is specifically named in the FIR She hatched the conspiracy to commit the murder of deceased Krishan with relative of her family namely co-accused Ram Karan, due to previous enmity and after hatching of the said conspiracy, the above mentioned occurrence was committed by co-accused. All these facts have been admitted by petitioner in her disclosure statement All the material prosecution witnesses are yet to be examined and if enlarged on bail, petitioner can tamper with the prosecution evidence by influencing the prosecution witnesses, who are yet to be examined and he can also hamper the trial by absconding from the process of law. Merely on the basis of longevity of incarceration, petitioner cannot seek the concession of bail as a matter of right. Thus, keeping in view the seriousness of offence and facts and circumstances of the case, she is not entitled to relief of bail as claimed for. titled to the relief of bail as claimed for.*

9. As per status report, the petitioner was named in the FIR and she has the conspiracy to commit the murder of Krishna with her family members due to previous enmity. The investigation primarily depends upon her disclosure which led to amount to confession and thus cannot be considered as a piece of evidence even for the purpose of bail. As such prima facie cannot be considered as incriminating evidence, for the purpose of bail. However, these observations are not on the case's merits.

10. The complainant has been examined as Witness No.2 and the copy of the statement was handover to learned counsel to the Court with its photocopy to the State. A perusal of the statement does not reveal any specific act against the petitioner of criminal conspiracy. Specifically act or factor to say that what to connect the petitioner with criminal conspiracy. However, the prosecution witness is yet to be examined as such this Court is not expressing any opinion that whether evidence of conspiracy is there or not. However, for the purpose of bail since it was the complainant who had suspected the involvement of the petitioner coupled with the fact that she is a woman and is entitled to bail. As such there is no justification to keep her in further custody.

11. 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 GudikantiNarasimhulu 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.

12. 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.

13. 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.

14. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over her bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

15. Give above, 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 concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any nearest Ilqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioner before the Court.

16. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the concerned court a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the clause of automatic renewal of the principal and the interest reverting to the linked account.

17. The fixed deposit need not necessarily be made from the applicant's account. If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned court. If made online, its printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along with its number and FIR number. After that, the applicant shall hand over such proof and endorsement to the concerned police station. Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, as the case may be. Subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes, if any, shall be endorsed/returned to the depositor.

18. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply to the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.

19. 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.

20. 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.

21. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner 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 might be 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 petitioner shall not be called before 8 AM and shall be let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

22. 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.

23. 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 ten days of release from prison 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.

24. 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.

25. The petitioner has declared through a notarized affidavit dated 02-04-2022, filed by her sister Gurvinder Malik, that she would stay away from the territories of Punjab, Haryana, and Chandigarh. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of one kilometer from the victim's home till the recording of the statements of all non-

official and informal witnesses in the trial. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (Crl.) 458); and Aparna Bhatt v. State of Madhya Pradesh, 2021 SCC Online SC 230.

26. 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. 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.

27. 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.

28. If the petitioner finds 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.

29. 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.

30. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

31. 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.

32. In return for the protection from incarceration, the Court believes that the

accused shall also reciprocate through desirable behavior.

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

May 12, 2022
Sonia arora

Whether speaking/reasoned:	Yes
Whether reportable:	No.