

CRM-M-3315-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3315-2022
Reserved on: 25.02.2022
Pronounced on: 08.03.2022

Vikas alias Vicky ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Sandeep Singh Jattan, Advocate for the petitioner.
Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
28	17.01.2015	Mahesh Nagar, District Ambala	148, 302, 303, 120-B & 34 of Indian Penal Code and Section 25 of Arms Act

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. As per paragraph 11 of bail application and the response of the State, the petitioner has following criminal history, however, in FIR No. 183-2010, the petitioner was acquitted and in FIR no. 40 of 2009 he has already undergone the entire sentence:

Sr. No.	FIR No.	Year	Offences under Sections	Police Station
1	40	2009	458, 328, 120-B IPC and Section 25-54-59 of Arms Act	Ambala Cantt (undergone sentence)
2	183	2010	285, 307, 506 IPC and Section 25-54-59 of Arms Act	Ambala Cantt (acquitted)

3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. Ld. counsel appearing for the State contends that bail encourages habitual offenders.

REASONING:

5. 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

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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history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.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.

6. As per the status report, the role of the petitioner came to the notice of the investigator during interrogation of the main accused. The petitioner was doing recce and at the time of murder, he was present near the spot. It would be appropriate to extract the following portions from the status report dated Feb 18, 2022, which read as follows:

(3). That as a matter of fact, the case FIR No. 28 dated: 17.01.2015 u/s 302/303/34/120-B IPC and 25 of Arms Act was registered at PS Mahesh Nagar, Ambala Cantt on the statement of Jahan Singh son of Nepal Singh r/o H. No. 362, Punjabi Baugh, Ambala Cantt against accused-petitioner, Kuldeep @ Kallu Shahpuria and others for committing murder of son of complainant namely Gajender Singh. The detailed facts of the FIR have been given in the copy of FIR, attached with the petition as Annexure P-1. However, during investigation of the case, it has come on the record that the present petitioner-accused Vikas @ Vicky was also involved in the commission of present crime alongwith other co-accused and he had committed the recce of the deceased with co-accused Gurdarshan Singh and at the time of commission of murder of Gajender Singh, the accused-petitioner was present near the place of occurrence i.e. near the house of deceased.

(4). That during investigation, on 17.01.2015, accused-petitioner Vikas @ Vicky, co-accused Gurdarshan @ Darshan, and Sourabh were arrested and during their interrogation on 18.01.2015, accused-petitioner Vikas @ Vicky, Gurdarshan @ Darshan and others have disclosed separately and independently that co-accused Kuldeep @ Kallu r/o Shahpur and co-accused Hardeep Singh went to the house of deceased Gajender Singh and demanded the ransom and thereafter, kuldeep Kallu and co-accused Hardeep Singh fired upon Gajender Singh with their country made pistol and committed his murder and thereafter all the accused ran away from the spot. The accused-petitioner has specifically disclosed in his disclosure statement that he alongwith co accused Gurdarshan Singh @ Darshan committed recce of the deceased and on the day of occurrence he was guarding the place near the house of deceased by standing at the road of Kardhan wall, near the house of Gajender Singh, and on refusal of pay them ransom, kuldeep @ Kallu and Co accused Hardeep Singh fired upon said Gajender Singh with their country made pistols and committed his murder and that he can identify the place where he was present at the time of occurrence.

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(5). *That during investigation, co-accused Gurdarshan Singh @ Darshan suffered disclosure statement and apart from other facts he has disclosed that he had taken part in criminal conspiracy for the commission of present crime and he was deputed to keep eye on the movement of Gajender Singh and on the day of occurrence co-accused Hardeep Singh and co-accused Kuldeep @ Kallu r/o Shahpur reached at the house of Gajender Singh whereas he was guarding the place by standing near the house of Gajender Singh, and on refusal of pay them ransom, kuldeep@ Kallu and Co accused Hardeep Singh fired upon said Gajender Singh with their country made pistols and committed his murder and that he had kept his mobile concealed and the same can be recovered by demarcating the place. The mobile phone of the co-accused used in the commission of crime has been taken in possession vide separate recovery memo. Thereafter, the co-accused was produced before the Ld. Court of Area Magistrate and was sent to judicial custody on 21.01.2015.*

(6). *That during investigation on 10.02.2015, co-accused Hardeep Singh was arrested in this case and produced in the Court on 11.02.2015 and was taken on police remand. Thereafter, on 16.02.2015, the co-accused Hardeep Singh led the police party at his house situated in village Hassanpur, PS Shambhu (Patiala-Punjab) and got recovered a country made pistol 12-bore from a iron box lying in the room of the house. On examination of the said country made pistol, one empty cartridge 12 bore was also recovered from the pistol.*

(7). *That as per the facts, the accused-petitioner alongwith Kuldeep @ Kallu, Hardeep Singh and others are the main accused who have committed murder of Gajender Singh by firing from country made pistol and the accused-petitioner had taken active part in commission of crime by way of recce of deceased Gajender Singh. It is relevant to submit here that the recovered country made pistol and empty cartridges examination were and sent to FSL/Madhuban for scientific vide report dated 31.07.2015 the recovered country made pistol and empty cartridge from co accused Hardeep @Monu is reported as fire arm as defined in Arms Act 54 of 1959 and it has been specifically held that the fire cartridge has been fired from country made pistol recovered from co-accused Hardeep @ Monu and not from any other fire arm even of the same make and bore/caliber because every fire arms has got its own individual characteristic marks. The copy of FSL report is annexed as Annexure R-1 for kind perusal of this Hon'ble Court.*

7. A perusal of the status report reveals that there is no justification of further incarceration of the accused at this stage. Given this 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. Given the evidence collected against the petitioner, and the evidence deduced from the statements of the witnesses already examined, coupled with the time already spent in custody is sufficient for granting bail. Further discussions might prejudice the case of the prosecution.

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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. 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.

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11. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, 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 his 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.

12. 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.

13. 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.

14. 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.

15. 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

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the concerned court to substitute fixed deposit with surety bonds and vice-versa.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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

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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.

23. 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.

24. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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.

25. 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.

26. 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.

27. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

28. *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

March 08, 2022
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.