

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4837-2022
Reserved on 10.02.2022
Pronounced on Feb. 17, 2022

Jakir @ Mota ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr.Vikram Singhh, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
134	21.6.2021	City Nuh, District Nuh	388, 389, 506, 379-B, 201, 420, 467, 468, 471, 120-B IPC, 1860 and Section 25 (Act No.54) of Arms Act, 1959

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 23 of the petition, it is declared that the accused has no criminal history.
3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family. He further submits that the co-accused Munni and Sanjida have also been granted bail by this Court and on the ground of parity, the petitioner also deserve grant of bail.
4. The contention on behalf of the State is that bail encourages criminals.

REASONING:

5. 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 (the present petitioner), Nishi and Sanjida. 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 allurements the complainant agreed to drop her on his bike. After crossing the valley, Nishi told the informant to 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 a 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 a 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.

6. The petitioner seeks bail also on parity. This court vide granting bail to co-accused-Sanjida in CRM-M 49280 of 2021, observed in paragraph 8 in the following terms:-

“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.”

7. After that this court granted bail to other co-accused Munni in terms of paragraph 9 of order passed in CRM-M 375 of 2022, which is extracted as under:-

“ 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.”

8. The role assigned to the petitioner is that he had pointed pistol towards the victim and is member of money trapping mafia. It might be hazardous for the victim in case he is released on bail before the recording of the statement of victim. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

9. 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.

10. In the light of ratio of the judicial precedents mentioned above, the petitioner's case does not fall in the category of cases where bail ought to be granted.

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 fails to make a case for bail at this stage.

12. 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.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

February 17, 2022
Sonia arora

Whether speaking/reasoned:	Yes
Whether reportable:	No