

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6390 of 2022
Reserved on: 21.02.2022
Pronounced on:-March 8, 2022

Rakesh Giri

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Arshvir Singh Sandhu, Advocate
for the petitioner.

Mr. Rehatbir Singh Mann, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
199	14.06.2020	Sohana, District SAS Nagar, Punjab.	323, 341, 506, 148, 149 of IPC, 1860 (307, 460 and 379-B IPC added later on).

1. The petitioner, incarcerated upon his arrest in FIR captioned above, has come up before this Court seeking regular bail.
2. In Para 11 of the bail petition, learned counsel for the petitioner declares that apart from the FIR mentioned above, one more criminal case is pending against the petitioner.
3. On 14.06.2020, the police recorded the statement of complainant under Section 154 of Cr.P.C. in the following terms :-

He stated that his son works as a security guard at Mohali. In the evening of 11.06.2020, he had gone to Mohali for his job, there 4-5 unknown persons started beating him and inflicted blows on his head. Subsequently, the members of the society brought him to the civil hospital from where he was referred to the PGI, Chandigarh. Based on this information, the police registered the FIR captioned above. During the course of investigation, the police came to know that mobile phone of the injured was snatched and further enquiry led to the involvement of Sohail, Nanu, Rakesh Giri (petitioner), Shahrukh Khan and Chandan. Consequently, the accused persons were arrested.

4. Ld. Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family. He further contends that the co-accused-Shahrukh Khan has already been granted concession of bail by this Court vide order dated 13.12.2021 and on the ground of parity, the petitioner also deserve an opportunity to grant concession of bail.

5. On the contrary, learned State counsel has opposed the bail. The other contention on behalf of the State is 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 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.

8. Considering the nature of injuries and the period of incarceration already undergone, there is no justification for further pre trial incarceration. Although, the petitioner has one more criminal case pending against him but this Court is inclined to afford one final opportunity to the petitioner to reform and mend his ways. Consequently, the present petition is allowed and the petitioner is admitted to bail. It is clarified that if the petitioner is involved in any other case then it shall be open for the State to move an appropriate application for cancellation of the bail of the petitioner. It is further clarified that the concerned Court dealing with the future bail application shall consider the aspect that despite warning to the petitioner to mend his ways, he did not do so.

9. Without commenting on the case's merits, given the investigation stage, the period of incarceration already undergone, nature of allegations and the circumstances peculiar to this case mentioned above, the petitioner makes out a case for release on bail.

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 Cr.P.C., 1973.

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. 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 Chief Judicial Magistrate/trial Court having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Illaqa Magistrate. Before accepting the sureties, the concerned Court must satisfy that in case the petitioner-accused fail to appear in Court, then such sureties are capable to produce the petitioner-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

13. In the alternative, the petitioner may furnish a personal bond of Rs. Ten

Thousand only (INR 10,000/-), and hand over to the the attesting officer, a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Such Fixed deposits 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 principal, and the interest reverting to the linked account. The arresting officer shall give a time of ten working days to enable the accused to prepare a fixed deposit. Such a 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 officer shall have a lien over the deposit until discharged by substitution, and in case any court takes cognizance, then such court, upon which the investigator shall hand over the deposit to such court, which shall have a lien over it up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be. If any, 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.

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

15. 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 also promise to appear before the higher Court in terms of Section 437-A Cr.P.C.

16. 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.

17. 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 of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

18. Given the gravity of accusations and the heinous nature of the offence, 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.

19. During the trial's pendency, if the petitioner 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 Cr.P.C.

20. The petitioner shall, under no circumstances, contact, call, text, remarks, stalk, stare, make any gestures, show or express any unusual or inappropriate, verbal or otherwise objectionable behaviour, to or in front of the victim, either physically or through any other mode, or roam around the victim's home, and shall also stay away 1 km. from the radius of residence of the victim.

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

22. In case the petitioner 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 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 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. In return for the protection from incarceration, the Court believes that the petitioner-accused shall also reciprocate through desirable behavior.

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

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

It is further clarified that this Court is giving final opportunity to the petitioner to mend his ways. In case he indulges in this offence again then this factor that the Court had given him a final opportunity, shall be considered dealing with his matter.

(ANOOP CHITKARA)
JUDGE

March 8, 2022
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Whether speaking/reasoned : Yes
Whether reportable No