

CRM-M-12630-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12630-2022
Reserved on: 30.03.2022
Pronounced on: 12.05.2022

Kesha ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep K. Rana, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
130	30.05.2021	Sarai Khawaja, Faridabad, District Faridabad	364-A, 506 & 120-B IPC

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 10 of the bail petition, the accused declares that he has no criminal antecedents.
3. On May 23, 2021, the complainant informed the police that his brother's son aged 12 years, had been kidnapped and a ransom of Rs. fifty thousand was demanded for safe release. On a frantic search, the police recovered the boy unharmed, from a slum, and arrested the accused including the petitioner.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
5. Ld. counsel representing the State opposes bail.

REASONING:

6. The boy was allegedly kept by the kidnappers in the jhuggi of the petitioner. There is no allegation of any maltreatment, non-providing of food, or assault. The petitioner is a woman aged 70 years, in custody since May 30, 2021, i.e., for more than eleven

CRM-M-12630-2022

months and 10 days, and is a first offender, and one of the relevant factors would be to provide an opportunity to course-correct.

7. The petitioner is not only a woman but also a mother, and the special reasons for bail emerging from the investigation and the facts and circumstances peculiar to the case, entitle her to bail at this stage.

8. Section 437(1) mandates that when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but - (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life; (ii) such person shall not be so released if such offence is a cognisable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognisable offence punishable with imprisonment for three years or more but not less than seven years]: Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm; provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason; however, only after giving an opportunity of hearing to the Public Prosecutor.

9. In Lingaram Kodopi v. State of Chhattisgarh, (2014) 3 SCC 474, the appellants before Supreme Court had been implicated under Sections 121, 124(1) and 120B of the IPC read with Section 8 (1) (2) (3) of the Chhattisgarh Jansuraksha Adhiniyam and Sections 10 & 13 of the Unlawful Activities of the Act, on the allegations that they were likely to work as conduit for paying huge ransom amount to the Naxalites for smooth running of a plant in the naxal affected areas. While granting bail, Hon'ble Supreme Court holds,

[15]. On the basis of the aforesaid orders, both the appellants are on bail with the condition that they would not enter the State of Chhattisgarh during this period. Other two accused persons have already been granted bail. Charges are yet to be framed. Soni Sori is having medical problems as well. There are certain circumstances, pleaded by the appellants, and if ultimately established, there may be a possibility of proving the innocence of the appellants. Soni Sori has lost her husband and has to look after her children who are of tender ages. Lingaram Kodopi, who is a young man of 24 years, claims to be genuinely attempting to establish himself as a good citizen in the society. Taking into consideration all these circumstances cumulatively and going by the past history, as demonstrated by both the Counsel for the appellants, we are of the opinion that the

CRM-M-12630-2022

appellants deserve to be enlarged on bail during the pendency of trial on furnishing personal securities in the sum of L 50,000/- with two sureties each of the like amount, to the satisfaction of the Trial Court.

[16]. At the same time, we agree with Mr. Mohta that there should be some stringent conditions for grant of bail to the appellants. Accordingly, we order that it would be subject to the condition that the appellants shall report to the concerned police station once a week i.e. at 10.30 a.m. on every Monday to show their presence. They would be permitted to take along their lawyer. Further, they shall appear before the Trial Court on each and every date of hearing and shall not seek exemption except when on a particular date they are unable to appear because of the reasons beyond their control, like illness etc. They shall also inform the Court about their place of stay/residence and disclose to the Court as to when there is a change of residence. Further, they shall not leave the station or travel abroad without the prior permission of the trial court.

10. In Mt. Choki v. State, AIR 1957 Raj 10, Rajasthan High Court observed that special treatment of women and children in bail matter is not inconsistent with Article 15 of Constitution of India.

11. In Hare Ram Chowdhary v. State of U.P., Law Finder Doc Id # 442924, Allahabad High Court observed,

[25]. I am, accordingly, of the view that as the social justice and welfare state are the avowed object, purpose and social and political aspirations of the sovereign socialist secular Democratic Republic, the courts has to interpret the provisions of statute, particularly First Proviso to Section 437 of the Code, with reference to a person below sixteen years of age, women, sick and infirm, so that these objects and goals might be achieved. The provisions of Article 15 (3) of the Constitution make it manifest, that the special provisions can be made in favour of women and children keeping in view their social conditions, with a view to extend social justice to them.

[30]. In my humble opinion, whenever a court is called upon to decide the case of a child below 16 years of age, a woman sick and infirm, the approach must be made so that he or she gets sufficient opportunity to obtain human happiness and perfection and is not exposed to moral degradation. In other words, while dealing with the case of a child below 16 years of age, or a woman or a sick or infirm, the court must be, in the words of Shakespeare, "filled with the milk of human kindness".

12. 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

CRM-M-12630-2022

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.

13. 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.

14. 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.

15. 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 his bank account. The accused should also have a further option to switch between the modes. The

CRM-M-12630-2022

option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

16. Given 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 Ilaqa 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.

17. 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.

18. 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.

19. 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.

20. 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

CRM-M-12630-2022

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.

21. 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.

22. 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.

23. 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.

24. Given the nature of the 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 from 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, provided otherwise permissible in the concerned rules.

25. 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.

26. 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

CRM-M-12630-2022

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.

27. 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 CrPC.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

CRM-M-12630-2022

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

34. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, within two days. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

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

12.05.2022
anju rani

Whether speaking/reasoned: Yes
Whether reportable: **YES.**