

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-19541-2022
Reserved on: 05.08.2022
Pronounced on: 29.08.2022

Shivam Kalia ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rajiv Joshi, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
186	31.12.2021	Division No.7, Jalandhar	307/323/324/341/34 IPC Section 302 added via DDR

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 14 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	129	25.12.2019	323, 324, 341, 148, 149 IPC	Jalandhar Cantt, Jalandhar

3. The complainant alleged that the petitioner Shivam and his accomplice Rakshak alias Rajat brutally assaulted his father with iron rods. He was admitted in hospital, referred to another, but ultimately he succumbed to the injuries.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
5. 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:

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history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included.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. The petitioner along with his associate have been named to be assailant. The explanation that the injuries could be result of road side accident appears to be a weak defence at this stage. The allegations against the petitioner are grave and serious. He took advantage of his previous bails and continued to participate in criminal activities. In the present case there is sufficient prima facie evidence pointing towards his involvement and his custodial interrogation is required.

8. An analysis of the allegations coupled with the previous criminal antecedents; the petitioner's custodial interrogation is required and he does not deserve to be released on anticipatory bail.

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 while considering regular bail under section 439 CrPC, if filed, or during the trial.

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

(ANOOP CHITKARA)
JUDGE

August 29, 2022
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Whether speaking/reasoned: Yes
Whether reportable: No.