

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25905-2022
Reserved on: 30.08.2022
Date of Pronouncement: 02.09.2022

Pardeep
...Petitioner (s)
Versus
State of Haryana
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Navkiran Singh, Advocate
for the petitioner(s).
Mr. Manish Bansal, D.A.G. Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
108	13.5.2022	Jhansa, District Kurukshetra	406 IPC

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 15 of the bail application, and the status report, the petitioner has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	413	30.12.2004	302, 307, 353, 186, 34 IPC and 25 Arms Act	Model Town, Panipat

3. The complainant informed the police that his poultry company had entrusted 7779 chickens to one Sukhwinder Singh for growth enabling their sale. However, the chickens were found missing, and CCTV footage revealed that Sukhwinder Singh had taken all of them out. The investigation revealed the involvement of Pradeep Kumar, and it further revealed that the petitioner had transported the chicken in two trucks and sold it in Delhi. A part of the sale proceeds was deposited in his bank account.

4. Ld. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever, and 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 Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

7. 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.

8. The entrustment was made to Sukhwinder Singh, and in CCTV footage he was seen taking out the chickens in trucks without number plates. It appears that the petitioner purchased the stolen chickens from Sukhwinder Singh, who had misappropriated a large number of chickens. Instead of custodial investigation, the Investigator is directed to take appropriate steps to make a recovery and this bail is subject to the petition co-operating with the investigator. Given the penal provisions imposed and the sentence provided by the Legislature, the nature of allegations and other factors and circumstances 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.

9. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

10. Given above, the interim orders dated 7-6-2022 and 5-7-2022 are made absolute, subject to the following additional conditions, apart from the conditions imposed in such orders and all conditions specified in S. 438(2) CrPC.

11. Within fifteen days from today, the petitioner shall forward to the Investigator/SHO and the complainant/victim(s) the complete details of bank account numbers with addresses, fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. ***If the petitioner fails to comply with this condition, then on this ground alone, the bail might be canceled, and the complainant may file any such application for the cancellation of bail, and State shall file the said application.***

12. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed." In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

13. 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.

14. 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.

15. 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.

16. 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.

17. 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 seven 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.

18. *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

Sept. 02, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.