

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26522-2022
Reserved on: 07-07-2022
Pronounced on: 19-07-2022

Habib ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Jitender Dhanda, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

Mr. Edward George Masih, Advocate,*Amicus Curiae*

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
204	09.11.2019	Bicchor, District Nuh.	148, 149, 323, 324, 452, 285, 302 IPC and Section 25 of Arms Act.

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 (Cr.P.C.) seeking bail.
2. In paragraph 10 of the bail petition, the accused declares that he has no criminal antecedents.
3. A group of nine persons armed with various weapons, including the petitioner who was carrying a stick, assaulted the deceased, who later on 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. Ld. Counsel representing the State opposed the bail because the petitioner had been absconding for almost two years, and as such, he is likely to abscond again. Ld. Counsel further asserted that the State is providing adequate and comfortable facilities in the prison for the older people.

6. Ld. Amicus favors bail for older people and has cited a plethora of data to support his submissions.

REASONING:

7. The petitioner had stated that he was not absconding from justice but he was afraid of catching Corona virus. Given the impact of Covid-19 pandemic particularly on the elderly, it would not be appropriate to disbelieve his submission entirely and to continue to believe that the petitioner, if released on bail, would again abscond and evade trial.

8. The weapon of offence attributed to the petitioner, who is an octogenarian, is a lathi. It is a matter of common knowledge that older people often make use of lathis/dandas in their routine life to aid their movements. Increasing age presents itself with complications such as postural deformities and decreased sensory input. Use of stick as an external support increases physical and psychological abilities. A large number of elders are dependant entirely on these sticks for balance and stability. Apart from the assistance in walking, these sticks also help them to dispel or protect themselves against stray, rabid or dangerous animals. In the present case, when the alleged offence was committed the petitioner was of the age where it can be safely assumed that he was in possession of a lathi as a means to support his body as opposed to a weapon intended to kill a person. Further, as per the status report, the other co-accused were armed with farsa, axe and iron rods. The petitioner is only attributed a danda blow which, in the light of the medical report, cannot be reasonably presumed to have caused the death of the victim.

9. As per the latest World Development Indicators, the life expectancy at birth for an Indian resident averages 69.887 years. Prison Statistics India 2020, compiled by the National Crime Records Bureau (Ministry of Home Affairs), Government of India, reveals that very few States provide special treatment or facilities for old age prisoners. The purpose of sentencing is two-fold: deterrence and retribution; and is intended to send a strong message to the people not to violate the law enacted by the State, simultaneously consoling and assuring the victims of the justice system put in place by the State and preventing the takeover of law into their own hands. However, this entire exercise loses its purpose when such an older person is involved. Reformation to re-enter the society as an objective of prisons becomes futile as the person is on the last leg of the life. Further, an old person cannot be meted out harsh treatments to give an example to the society as it would tantamount to cruelty. Mere existence in confinement seems more challenging than living without special arrangements and psychological support of family members for such persons. Thus, would it be justifiable to deny bail to a centenarian, nonagenarian, or octogenarian? It can have

just one answer: a thunderous NO anywhere in the globe. The only exceptions are extreme perversity, extremely heinous crime, mass slaughters, or recidivists who refuse to mend their ways to blend with the community without disrupting the social order. Thus, it is hazardous to deny bail to people over a particular age, and there is a need to be sensitized about the sufferings associated with old age, realizing that sending these older people to jails or prisons serves no purpose whatsoever, for whom so ever, wheresoever. In the background of these peculiar facts, coupled with the petitioner being 81 years, date of birth as per AADHAR Card 12-5-1941, the Court is inclined to grant bail to the petitioner.

10. 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.

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 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.

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

13. 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 Ilqa 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.

14. 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.

15. 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.

16. 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.

17. 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 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.

18. 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.

19. 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.

20. 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.

21. 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'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.

22. 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 remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

23. 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.

24. 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.

25. 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.

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

27. 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.

28. *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

July 19, 2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: YES.