

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26571-2022
Reserved on: 22.06.2022
Pronounced on: 28.06.2022

Kuldeep Singh and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Charnjit Singh, Advocate for the petitioners.

Mr. R.S.Khaira, AAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
30	11.03.2022	City Rampura, District Bathinda	324, 323, 452, 148, 149, 506 IPC and offence under Section 307 IPC added vide DDR No.31 dated 04.04.2022

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. The allegations are that the petitioners alongwith other accused, armed with kirpans, dandas, iron rods attacked the inmates by entering into the complainant's house, and brutally assaulted them.
4. Ld. Counsel for the petitioners contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioners and family.
5. Ld. counsel representing the State opposes bail.

REASONING:

6. The defence plea as set up in paragraphs 3 & 4 are as follows:

"3. That the true facts of this case are that in the mid night of 09/10.03.2022 at about 12:30 AM in the neighbor the marriage function was

took place of Jagsir Singh s/o Gora Singh and on the occurrence D.J. was running and Gurmeet Singh alias Saida, Sanny Singh s/o Gurmeet Singh alias Saida, Simarjit Kaur w/o Gurmeet Singh alias Saida, Kajal Kaur w/o Gurmeet Singh alias Saida, Santokh Singh s/o Veer Singh, Gurwinder Singh alias Bhindi s/o Gora Singh, Kulwinder Kaur d/o Gora Singh, Kalu Kaur d/o Gora Singh, Jagseer Singh s/o Gora Singh all residents of village Mehraj, Kothe Maha Singh (Vadian), Tehsil Phul, District Bathinda was done dance and for the running song a quarrel was made between them and the petitioners had gone for just to release them from each other, but they made quarrel with the petitioners, but the petitioners were tried to linger the matter one pretext or the other, but the abovesaid persons made. a call and called some unknown persons, who armed with deadly weapons, who came on the occurrence and made openly firing, whole the occurrence was recorded in the CCTV Cameras, which can produce by the petitioners. It is further stated that brother of petitioner no. 1 & father of the petitioner no. 2 i.e. Randhir Singh is the active member of BSP as Suba Secretary and that persons belongs to another political party, so they attacked upon us, who five fired and said by raising lalkaras loud that they will take rest after kill to brother of petitioner no. 1 & father of the petitioner no. 2 i.e. Randhir Singh alias Dheera, but the brother of petitioner no. 1 & father of the petitioner no. 2 Randhir Singh was not present at the spot, due to he was remained save, during this incident when mob of the many peoples ran back of the above said persons then they ran away from the apot and made injuries to each other and they succeed to ran away just to. take advantage of the dark.

4. That the petitioners had made multiple calls to the police at police help line No. 100, SHO Rampura Phul M. No. 7508018111 and police station phone no. 7508018140 at the time of occurrence and ASI Charanjit Singh came on the spot and made peace on single time and on the next day in the morning the police took the action against the petitioners at the instance the abovesaid persons and has arrested my brother Gurtej Singh and nephew Jagmeet Singh alias Roak and no action has been taken by the police against the actual accused persons. ASI Amrik Singh of P.S. City Rampura, came to the house of the petitioners in their absence and threatened to the family members of the petitioners that father of the brother of petitioner no. 1 & petitioner no. 2 i.e. Randhir Singh caught hold the cotton on his back and who persons already arrested by them, the water neem remained boil for their treatment."

6(A). Given the counter versions, the pre-trial incarceration might result in irreversible loss of reputation, which cannot be undone. Moreover, the petitioners are first offenders, and one of the relevant factors would be to provide an opportunity to course-correct. Even a prima facie perusal of paragraph 6 & 7 of the bail petition needs consideration for bail.

7. 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 petitioners who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioners 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.

8. 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. In Sumit Mehta v. State of N.C.T. of Delhi, (2013) 15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

9. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners 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.

10. 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 their 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.

11. Given above, in the event of arrest, the petitioners shall be released on bail in the case mentioned above, subject to their furnishing a personal bond of Rs. Ten Thousand only (INR 10,000/-), each, and furnishing one surety for Rs. Twenty-Five thousand only (INR 25,000/-), each, to the satisfaction of the concerned Investigator. Before accepting the sureties, the concerned officer must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioners before the Court.

12. In the alternative, the petitioners may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), each, and hand over to the the attesting officer, a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), each, 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.

13. 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 for substitution of fixed deposit with surety bonds and vice-versa.

14. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioners 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 petitioners shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

15. The petitioners 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.

16. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioners 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 petitioners 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.

17. The petitioners 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.

18. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within ten days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioners shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

19. Till the completion of the trial, the petitioners 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.

20. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of one-hundred meters from the victim's home 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.

21. During the trial's pendency, if the petitioners 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 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.

22. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioners understand.

23. If the petitioners find bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioners find 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 petitioners 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.

24. 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.

25. 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 petitioners notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

26. 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.

27. **The petitioners are directed to join the investigation within three days from today and subsequently on every date as and when called by the Investigator.**

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

29. 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.

30. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners 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

28.06.2022
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Whether speaking/reasoned: Yes
Whether reportable: No.