

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27176-2022
Reserved on: 22.06.2022
Pronounced on:28.06.2022

Harmanjot Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Jammu, Advocate for the petitioner.

Mr. R.S. Khaira, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
91	12.05.2022	City Moga, District Moga	376 IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 Cr.P.C seeking anticipatory bail.
2. In paragraph 23 of the bail petition, the accused declares that he has no criminal antecedents.
3. The victim, who is a working matured adult lady alleged that the petitioner slowly and steadily started making friendship with her and on one day took her to his home where he tried to establish sexual relationships with her. On her refusal, he played Anand Karaj Sahib from his mobile phone and placed the Gutka Sahib and took laavaan phere with her. He also applied vermilion on the parting line of my head. After that, he committed sexual intercourse with her. Later on, he resiled from the said marriage. The petitioner declared the victim to be his wife from that day onwards. Slowly and steadily he will reveal the factum of marriage and he asked her not to reveal it to anyone. The victim stated to the petitioner that she was very much afraid and is having headache. The petitioner gave her a medicine to stop headache. After giving the medicine, the petitioner hugged her and asked her to sit on the bed, when the victim refused to do so, he forcibly threw her on the bed and committed rape upon her. The victim said that she did not know anything about sex and he did it forcibly. When she raised cries, then the petitioner told her that none would hear her cries and nobody would come to rescue her. Because of the sexual act, she got marks and bruises all over

her body. When she tried to run away, then the petitioner opened his turban and tied her with the bed and again committed rape upon her. When he would stop penetrating her from vagina, then he would start doing the same from her anus. She cried a lot but he did not stop. He stated that this is a normal relationship between husband and wife. He offered her water and assured her that nothing would go. He also touched her feet and declared that nothing would happen. He would marry her as and in front of everyone and then sent her back to her home. At that time, she was unable to walk. After reaching home, the victim noticed marks and bruises on her body and brought this fact to the notice of the petitioner. On the next day, the petitioner provided her a tablet for unwanted pregnancy which she took. After that day, he again continued to have sexual relationships with her. He stopped her to talk to anybody in the Court, where she was working. In case, she would talk to anybody then he would call her and abuse her. He kept on calling her and when she would refuse to come, then he blackmailed her under the protest that he would show her nude photographs and video to her father. Later on, she introduced the petitioner with her family members. There is no need to refer the further allegations in detail.

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. Ld. counsel representing the State opposes bail.

REASONING:

6. The victim is an employee, matured lady and working in the Court and she would know the consequences and legal remedies. Instead her keeping quiet for such a long time would make out a case for bail to the petitioner. There is no need to comment further, it might prejudice the case of the prosecution. The petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course-correct. Even a prima facie perusal of paragraph 6 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 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.

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 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.

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 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.

11. Given above, in the event of arrest, the petitioner shall be released on bail in the case mentioned above, subject to his furnishing a personal bond of Rs. Ten Thousand only (INR 10,000/-), and furnishing one surety for Rs. Twenty-Five thousand only (INR 25,000/-), 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 petitioner before the Court.

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

15. 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.

16. 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.

17. 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.

18. 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 today 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.

19. 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.

20. 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 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 (CrI.) 458; and Aparna Bhatt v. State of Madhya Pradesh, 2021 SCC Online SC 230.

21. 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 Cr.P.C.

22. 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.

23. 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.

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 petitioner 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 petitioner is 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.

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**

28.06.2022
Jyoti-II

Whether speaking/reasoned: Yes
Whether reportable: No.