

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51395-2021
Reserved on: 24.03.2022
Pronounced on: 26.04.2022

Dheerpal @ Deepak ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ajay Shekhawat, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
492	30.10.2017	Pataudi, Gurugram, District Gurugram	392 IPC and Section 25 of the Arms Act (Later on under Section 397 and 34 IPC charges were framed and offence under Section 392 was deleted

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. The status report reads as follows:

“(2). That before proceeding further with the present status report, it is imperative to mention the brief facts of the case which are that a complaint was submitted by one Ram Niwas, alleging therein that he is resident of village Bikener Tehsil and District Rewari He is running a lab in the name and style of Simran with Sanjivni Hospital On 30.10.2017. at about 8:30 AM, he had proceeded for his shop at Pataudi, as per daily routine by his vehicle bearing no HR-99-Temp-4507 He was alone in t his vehicle. When he crossed village Mandpura, suddenly one vehicle. came from backside and parked in front of his vehicle, due to which he stopped his vehicle. Two young persons armed with illegal weapons, got alighted from the said vehicle and came to him. Out of those persons. one person put country made pistol at his ear pit as window of his vehicle was opened and asked him to get alighted form the vehicle. Due to fear he got alighted and thereafter both persons snatched his vehicle and fled away. One of their companion took their vehicle. Number of the vehicle

of those persons was of Delhi but due to fear he could not note down the complete number and marka of their vehicle and he also fled away On the basis of above allegations, FIR No. 492 dated 30.10.2017 u/s 392 IPC and 25 Arms Act was initially registered at P S. Pataudi, Gurugram

(3) That the investigation was conducted by ASI Harjeet Singh During investigation, it came forth that the petitioner Dheerpal @Deepak, and co-accused Ashish @ Billa and Amil have disclosed about the commission of present offence, while making disclosure statement in another case FIR No. 1009 of 2017 u/s 353, 186, 307 IPC and 25 Arms Act PS. Jhajjar The petitioner Dheerpal @Deepak was arrested on 21 12 2017 after his appearance on production warrants. His disclosure statement was recorded. He got demarcated the place of occurrence Co-accused Ashish @ Billa and Amit were arrested on 04.01.2018 after their appearance on production warrants. Their disclosure statements were recorded. Accused Amit disclosed that the vehicle no. DL-9C-CA 1278 used by them in the crime was being driven by the petitioner Dheerpal @Deepak and that he and Ashish alighted from the car with country made pistol (desi katta) and took the car of the complainant at gunpoint. They also got demarcated the place of occurrence.

(4). That the vehicle ECO Sport No. DL-9C-CA-1278 and the country made pistol used in the present occurrence were already got recovered by the accused persons in above mentioned FIR No. 1009 of 2017 PS, Jhajjar An application was moved before the Jhajjar Court for transferring the said case property in the present FIR, however, the same was declined by the Ld. Court Section 397 IPC was added and Section 392 IPC was deleted during the checking of challan."

3. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. 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:

5. 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.

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. As per the status report, the petitioner was arrested on Dec 21, 2017. Thus, he is in custody for around 4 years and 4 months. Given the nature of allegations coupled with the pre-trial custody, and other factors peculiar to this case, further pretrial incarceration is not justified and 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Give 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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. Needless to say, the petitioner shall join investigation if called upon to do so.

18. 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.

19. Given the nature of 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 of 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.

20. 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.

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. 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. *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

April 26, 2022
Sonia arora

Whether speaking/reasoned:	Yes
Whether reportable:	No.