

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52423-2021

Date of Decision: 10.02.2022

Harjit Kaur
...Petitioner (s)
Versus
State of Punjab
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
129	01.07.2021	City Gurdaspur, Gurdaspur	302, 201, 364, 365 and 34 IPC

The petitioner who is accused in the FIR captioned above has come up before this Court seeking regular bail under Sections 439 Cr.P.C.

2. On 01.07.2021, father of the deceased informed the police that his son was serving in GREF Department at Arunachal Pradesh. He stated that on 30.06.2021 his son told him that he would be flying to Amritsar and from there he will reach home by bus. Then at about 12.47 am, his son on phone call, told him that he has arrived near Gurdwara Sahib and has been surrounded by some people who are suspecting him that he has come to Gurdwara Sahib during night hours for committing theft, at which point call got disconnected and mobile was reportedly switched off. Subsequently, in the morning when complainant reached at the spot, he found the dead body of his son at Dead House. He further added that he had come to know that his son was killed by Gurjit Singh, Harbhajan Singh, Dalbir Singh and two un-identified persons. Based on this complaint, the police registered the FIR captioned above.

3. Status report by way of affidavit has been filed by the State which is taken on record. Learned State counsel has opposed the bail on merits.

4. In the investigation itself, it was revealed that Gurjit Singh and Dalbir Singh had allegedly inflicted blows along with two un-identified persons. In the interrogation, Gurjit Singh, Mehardeep Singh (juvenile), Harjit Kaur, Darkirat Singh (juvenile) and

Jaspinderpal Singh were nominated as accused vide Diary No.3 dated 07.07.2021. Subsequently, Daljit Singh was also arrested and one more person Jaspinderpal Singh was also arrested. In the interrogation, the unknown person Vijay Kumar was nominated as accused in this case vide GD No.24 dated 12.07.2021, but during the investigation, Vijay Kumar was found to be innocent in this case vide GD No.55 dated 08.09.2021.

5. Learned counsel for the petitioner sought bail on the grounds that the petitioner is a woman.

6. The police report has already been filed in this case and investigation is complete. The role assigned to the petitioner is that she had tied the deceased with a rope. As per the status report, the police had also recovered PAN card, Aadhar card, identity card and Fauji pouch of the deceased. As far as recovery of these articles is concerned, these have hardly any monetary value. In fact, it can also go a long way to show that the lady had kept documents in safe condition and nothing had stopped her from destroying the same. Thus, without making any observation about the merits of the case as it may prejudice the case of the prosecution, however, in the entirety of the facts and circumstances of the case coupled with the fact that the petitioner has already been incarcerated for more than seven months, the petitioner makes out a case for bail at this stage.

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. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, 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.

9. Given above, 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 Special Judge/Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Illaqa Magistrate/Duty Magistarte. Before accepting the sureties, the concerned Court must satisfy that in case the petitioner-accused fails to appear in Court, then such sureties are capable to produce the petitioner-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

10. 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.

11. 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.

12. 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.

13. 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.

14. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

15. The petitioner to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

16. The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

17. 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 CrPC.

18. 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 vernacular and if not feasible, in Hindi.

19. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

20. 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.

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

22. *There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioner can download this order along with the case status from the official web page of this Court and attest it to be a true copy. The Prosecutor shall also verify the downloaded copy by comparing it from the official web page. In case the attesting officer or the Court wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

23. In the facts and circumstances peculiar to this case, the petition is allowed in the terms mentioned above. Pending applications, if any, shall stand disposed of.

(ANOOP CHITKARA)
JUDGE

February 10, 2022
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No