

CRM-M-54812-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(109)

CRM-M-54812-2021.
Date of Decision:-04.01.2022.

Kulwinder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sandeep S. Majithia, Advocate for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. Rahul Sharma, Advocate for the complainant.

(Through Video Conferencing)

ANOOP CHITKARA, J. (Oral)

FIR No.	Dated	Police Station	Sections
0104	31.10.2021	Women, Police Commissionerate, Ludhiana	406 and 498-A IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In Para 13 of the bail application, the petitioner declares no criminal history.
3. 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.
4. Learned counsel for the State as well as complainant has opposed the bail on the grounds that dowry articles are yet to be recovered.

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REASONING:

5. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273**, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

6. 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.

7. 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.

8. In the event of arrest, 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/-), with one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Investigator. Before accepting the surety, the attesting officer must satisfy that if the accused fails to appear in Court,

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then such surety is capable of producing the accused before the Court, keeping in mind the jurisprudence behind the sureties, which is to secure the presence of the accused.

9. 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.

10. 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.

11. 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.

13. This bail is subject to the condition that within one week from today, the petitioner shall handover all the belongings of the complainant, including all documents, all clothes, entire cash, all jewellery, and all other articles whatsoever, either to her or to the Investigator. In case the petitioner fails to comply with this direction, the State shall file an application for cancellation of this bail. It shall also be permissible for the complainant to file an application for cancellation of the bail.

14. 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.

15. In case the petitioner finds the bail condition(s) as violating

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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.

16. 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.

17. 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.

18. 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.

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

20. This bail is subject to the petitioner joining investigation and fully cooperating with the investigating agencies.

21. 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.

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Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

January 04, 2022.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No