

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-3652-2023 (O&M)

Reserved on: 15.02.2023
Pronounced on: 17.02.2023

Karamjit Singh

... Petitioner(s)

Versus

State of Punjab

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. APS Deol, Sr. Advocate with
 Mr. Vishal R. Lamba, Advocate
 for the petitioner(s).

 Mr. Virat Rana, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
180	10.7.2021	Division no.6, Commissionerate of Police, Ludhiana, District Ludhiana.	376, 354, 354A, 506, 120-B IPC & 376-2(N)/ 201 IPC (added by way of supplementary challan)

1. The petitioner incarcerated in the FIR captioned above, on the allegations of sending whatsapp messages, making calls including threatening calls in order to exploit the victim, has come up before this Court under Section 439 CrPC seeking bail.
2. As per paragraph 10 of the bail petition, the petitioner is in custody since 11.7.2022 and he has no criminal antecedents except FIR No.19 dated 8.2.2022 under Sections 307, 427, 148, 149, 506, 188 IPC and Sections 25, 27 Arms Act, registered at Police Station Shimlapuri, Ludhiana, in which the investigation *qua* the petitioner is still pending. The petitioner has also produced on record FIR no.105 dated 21.4.2022 under Section 174-A IPC P.S. Division No.6, Ludhiana in pursuance of proclamation issued in FIR No.19 dated 8.2.2022, in which he is on bail. As per the reply filed by the State by way of affidavit of Assistant Commissioner of Police, Industrial Area-B, Ludhiana, the

State has not disputed the criminal antecedents of the petitioner.

3. While opposing the bail, the State contends that given the criminal past, the accused is likely to indulge in crimes, after he is released on bail. State counsel has referred to the statement of the victim, wherein she had mentioned that the petitioner made phone calls and sent obscene and objectionable messages to her and also issued threats to her. Thus, the petitioner is not entitled to bail because of his conduct.

4. The victim in her complaint under Section 156(3) CrPC implicated the petitioner Karamjit Singh, who is brother of Simarjit Singh Bains, for sending obscene and objectionable whatsapp messages and threatening video calls with a view to pressurize her and to establish relationship with him. As per paragraph 5 of the status report, during the investigation, the investigator took into possession the mobile phone of the victim and sent the same to cyber cell, where the data was retrieved, which pointed out that the Simarjit Singh Bains and the petitioner Karamjit Singh used to send whatsapp messages, make calls including threatening calls in order to exploit the victim. In her supplementary statement recorded under Section 161 CrPC on 16.11.2020, the victim stated that the petitioner Karamjit Singh made continuous phone calls to her and when she did not take the calls, at that point of time, he trespassed into her house and threatened her to withdraw the complaint. The investigator also took the possession of mobile phone of the petitioner and tower location pointed out petitioner's presence in the vicinity of the victim's house.

5. This Court had granted bail the main accused Simarjit Singh Bains after careful *prima facie* assessment of victim's statement. The allegations against the petitioner are of sending whatsapp messages, making calls including threatening calls in order to pressurize the victim. Thus, the allegations against the present petitioner stand on much lesser footing in comparison to Simarjit Singh Bains, to whom this Court had granted bail. Petitioner's counsel has no objection to imposition of any stringent conditions upon the petitioner in case of grant of bail to him.

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.

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 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.

9. Given above, provided the petitioner is not required in any other case, he shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/-); AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, any nearest Illaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b) Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten Thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the ‘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 sector banks. The fixed deposit need not necessarily be made from the petitioner's account.

(c). 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, and at that stage, 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.

(d). It shall be the total discretion of the petitioner to choose between surety bond and fixed deposit. It shall also be open for the petitioner to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(e). On the reverse page of personal bond, the petitioner shall mention his permanent address along with the phone number, preferably that number which is linked with the AADHAR, 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.

(f). 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 declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and also of this bail order.

10. 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.

11. 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 fifteen days from 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, provided otherwise permissible in the concerned rules.

12. 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.

13. 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 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.

14. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

15. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signature on personal bonds shall explain all conditions of this bail order in any language that the petitioner understand.

16. 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.

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

18. *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

February 17, 2022
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No