

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5667-2023
Reserved on: 03.02.2023
Pronounced on: 01.03.2023

Nirmal Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Salil Dev Singh Bali, Advocate for the petitioner(s).

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
20	13.03.2022	Zira, District Ferozepur, Punjab	307, 341, 323, 34 IPC (302 IPC added vide Rapat No.25 dated 29.03.2022) (section 3/4 of SC & ST Act added vide Rapat No.22 dated 05.06.2022) Charged framed under Section 302 r/w 34 IPC and 3(2) (V) of SC & ST (Prevention of Atrocities), 1989

1. The petitioner apprehending arrest in the FIR captioned above, after being summoned u/s 319 Cr.P.C. by the trial Court, on the allegations of assaulting the deceased, by sharing the common intention with the main accused and another co-accused, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In Note 2 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. He further argued 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. State's counsel opposes the bail.

5. On March 13, 2022, the brother of the deceased-Iqbal Singh @ Bau informed the police about the incident. He alleged that Nirmal Singh (the present petitioner) and Manpinder Singh @ Mani and Amritpal Singh @ Mani had surrounded his brother. At that point of time Manpinder Singh @ Mani picked up a brick and threw it towards his brother-Iqbal Singh. The said brick hit his brother on his head. After that Manvinder Singh picked up another brick and again threw the same toward his brother and that brick hit below his chin. His brother fell down and at that time Amritpal Singh started giving *dang* blow to his brother. Nirmal Singh and Manpinder Singh also started beating him. On raising hue and cry, the accused fled away from the spot. Iqbal Singh was taken to the hospital and later on he died.

REASONING:

6. The petitioner refers to report (Annexure P-2) prepared by Dy. Superintendent of Police, Zira dated 10.05.2022. In the said Inquiry report, it has been pointed out that the petitioner-Nirmal Singh s/o Karamjit Singh was not found present at the spot but he was present in birthday party of one Nimrat Kaur (the daughter of his friend-Jagroop Singh). The inquiry report further revealed that Nirmal Singh-petitioner was named as an accused falsely by the complainant.

6(a) The petitioner also referred to post-mortem report (Annexure P-3). A perusal of the same points out that the patient was unconscious because of effect of heavy alcohol and there was history of vomiting and Nasal bleed. Report further pointed out lacerated wound on the chin with clotted blood and also on head. Even in the complaint, the brick blows were attributed to Manpinder Singh and *dang* blow to Amrit Pal Singh. Only allegation against the petitioner was that when Iqbal Singh fallen down, at that time he alongwith Manpinder Singh further gave him beatings. The post mortem report does not refer any such extra beatings.

6(b) Given above, the petitioner's case is on lower footing than of other co-accused and he is entitled to bail. On prima facie analysis of the nature of allegations, injuries inflicted by the petitioner, and other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration 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. 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, provided the petitioner is not required in any other case, the petitioner 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 trial Court. Before accepting the surety, the concerned officer must satisfy that if the accused fail to appear in court, then such surety can produce such accused before the court.

OR

(b) Petitioner to hand over to the concerned investigator/SHO 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 favour of the ‘Chief Judicial Magistrate’ of the concerned district. The 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). In case of the launching of the prosecution, the said fixed deposit be forwarded to the concerned court along with the police report/challan under 173 CrPC.

(d). 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.

(e). It shall be the discretion of the petitioner to choose between surety bonds and fixed deposits. 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.

(f). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that numbers 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.

(g). The petitioner is 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.

12. The petitioner is directed to join the proceedings before the trial Court on or before the next date before the trial Court, within five days and also as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act.

13. 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.

14. 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 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.

15. 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.

16. 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.

17. 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."

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 any

language that the petitioner understands.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. 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, without any delay. 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.

25. *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.

It is clarified that the other co-accused shall not be entitled for grant of bail on parity with Nirmal Singh-the present petitioner, they will have to make out their own case.

(ANOOP CHITKARA)
JUDGE

01.03.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.