

CRM-M-17655-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17655-2023
Reserved on: 27.04.2023
Pronounced on: 17.05.2023

Kulwinder Kaur @ Kinder ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. G.S. Bajwa, Advocate for the petitioner.
Ms. Navreet K. Barnala, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
36	27.02.2023	Jandiala Guru, District Amritsar (Rural)	302, 201, 34 IPC

1. The petitioner, a woman aged 33 years, apprehending arrest in the FIR captioned above, on the allegations of injecting heroin to a drug-dependent and their distant relative Bhupinder Singh, in association with other co-accused-her husband Jaspal Singh and nephew Bhupinder Singh, and when due to drug overdose, Bhupinder Singh died, then helps the other co-accused in taking the dead body out of their house and placing it in a public place, to conceal the crime and destroy evidence, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 15 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. Petitioner's counsel 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.

REASONING:

5. For facts and role of the petitioner, and evidence collected against her, it shall be appropriate to refer to paragraphs 3 to 8 of the status report filed by the concerned

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DySP, which reads as follows:

"3. That it is humbly submitted that as per the detailed report furnished by 5110 of Police Station Jandiala, Amritsar Rural, the facts of the aforesaid FIR No. 36/2023 (supes) are that on 27.02.2023, the statement of the Complainant Gurpreet Kaur Wio Late Harpreet Singh @ Happy Rio Village Balla Manpur, Amritsar was recorded by Sub Inspector Dharminder Singh of Police Station Jandiala, Amritsar Rural, wherein it was alleged that the house of Jaspal Singh Jassa So Hira Singh is situated near the bouse of the complainant, who lives with his son Gurjet Singh and wife Kulwinder Kaur (Petitioner). The husband of the complainant namely Harpreet Singh @ Happy had earlier fallen in bad company and started taking intoxication. On 08/02/2023 at about 7PM, Harpreet Singh@Happy had gone from his house without telling anyone. The complainant tried to search him, but could not find him. Thereafter at about 09PM, the complainant went to the house of Jaspal Singh @ Jassa for enquiring then no person was present in their house and the complainant came back to her house. Because the above said persons are involved in selling narcotic substances and husband of the complainant used to go to their house for taking intoxication. After some time in night, Jaspal Singh @ Jass and his son Gurjot Singh @ Goti came to the house of the complainant and asked about her husband Harpreet Singh @ Happy. The complainant told to them that she did not know where her husband Harpreet Singh @ Happy had gone Thereupon, Jaspal Singh @ Jassa and Gurjot Singh @ Goti told the complainant that they would search for him and bring him back. After some time Jaspal Singh @ Jassa and his son Gurjot Singh @ Goti came to the house of the complainant and told that the dead body of Harpreet Singh @ Happy was lying near mobile tower. Thereupon, Manjit Kaur mother-in-law of the complainant went along with them and brought dead body of Singh @ Happy to the house. The above said persons told that Harpreet Singh had administrated injection of intoxication and died On 09.02.2023 at about 11AM, the dead body of Harpreet Singh @ Happy was cremated at cremation ground of the village. After about 2 to 3 days, the complainant came to know from the village that the husband of the complainant had died in the house of Jaspal Singh @ Jassa. Thereupon, the complainant checked CCTV cameras installed in the house of Avtar Singh @ Sonu S/o Didar Singh R/o Village Balia Govanpur and came to know that after death of Harpreet Singh @ Happy, the above said Jaspal Singh @ Jassa and Bhupinder Singh @ Bhinda S/o Pargat Singh Rs/o Balia Manjpur while riding on Activa scooter colour white had thrown dead body of Harpreet Singh @ Happy in fields, Gurjot Singh @ Goti and his mother Kulwinder Kaur @ Kinder (Petitioner) are seen cameras while making surveillance on the persons passing through the road. The complainant further stated that the above said persons called her husband Harpreet Singh @ Happy to their house and made him consume intoxication, due to which Harpreet Singh Happy died and they threw his dead body outside in the fields. The above said persons have killed her husband and made her widow and her children orphanage. The complainant made discussion with esteemed persons, but could not reach to any

conclusion. Therefore, on the basis of the aforementioned statement, the aforesaid FIR No. 36, dated 27.02.2023, under Sections 302, 201, 34 IPC, Police Station Jandiala, Amritsar Rural was registered.

4. That it is humbly submitted that after registration of the aforesaid FIR No. 36/2023 (supra), the investigation commenced. During investigation, statements of the witnesses namely Amarjit Singh, Kashmir Singh, Pargat Singh and Kulwinder Singh residents of Village Balia Manipur, Amritsar were recorded under Section 161 Cr.PC, who corroborated the allegations levelled in the aforesaid FIR by the complainant. Amarjit Singh stated that on 08.02.2023 at about 9:30 PM, he was coming to his house from the side of mobile tower At that time, Bhupinder Singh @ Bhinda and Jaspal Singh @ Jassa were coming on one Aactiva scooter and one person, whose face was covered with cloth, was sitting betwens them. They seemed to be nervous. Amarjit Singh asked them to stop, Int they did not stop and had gone ahead. After sometime Bhupinder Singh and Jaspal Singh came back on the same Aactiva and had gone wwards the village in high speed. On the next day he came to know that Harpreet Singh Happy had died due to taking injection of intesication. After someday it was talk of the town that on that day Jaspal Singh Jassa, Kulwinder Kaur (petitioner), Gurjot Singh @ Goti, Bhupinder Singh had administrated injection of intoxication to Harpreet Singh Happy, due to which he died at the spot. Thereafter they all in connivance with each other threw dead body of the deceased in fields.

5. That it is humbly submitted that during investigation, the accused Jaspal Singh @ Jansa was arrested on 27.02.2023. During custodial interrogation, the accused Jaspal Singh @ Jassa suffered disclosure statement before the Investigating Officer, wherein be disclosed that on 08.02.2023, he along with his wife Kulwinder kr and nephew Bhupinder Singh @ lthinda was present at his house then Harpreet Singh @ Happy, who is his nephew in distant relations, and be was taking intoxication of heroin and used to come to their house for taking drug and they also used to administrate injection to him in order to check capacity of the intoxication, had come to their house. They (accused) administrated injection of heroin to Harpreet Singh and at the same time, the health of Harpreet Singh to deteriorated and Harpreet Singh died at the spot and they all the family members got scared. Thereafter they all in connivance with each other, loaded dead body of Harpreet Singh on Aactiva, colour white bearing No. PD02-11-4812 and threw it near mobile tower outside the village. Jaspal Singh Jass further disclosed that the needle and syringe used for administrating injection to the deceased Harpreet Singh was concealed in bricks lying near bathroom of his house and the same was recovered on the basis of his identification, The above said Aactiva scooter used in commissions of crime, was also taken into police possession. The disclosure memo is unneed herewith as Annexure R-1/T for the kind perusal of this Hon'ble Court.

6. That it is humbly submitted that the accused Jaspal Singh @ Jassa was produced before the Learned Court of competent Jurisdiction and was sent to judicial custody.

7. That it is humbly submitted that during the course of

investigation of the present case FIR No. 36/2023 (supra), the DVR along with one pen drive which contain CCTV footage of the accused Jaspal Singh and Bhupinder Singh while taking dead body of the deceased Harpreet Singh on the above said Activa scooter, were taking into police possession on 02.03.2023 from Avtar Singh @ Sonu S/o Didar Singh R/o Dalia Manjpur, Amritsar.

8. That it is humbly submitted that during the course of investigation of the present case FIR No. 36/2023 (supra) the co-accused Harbinder Singh Bhupinder Singh @ Bhinda Se Part Singh Rio Balia Manipur, Amritsar was arrested on 02.04.2023. During custodial interrogation, the co-accused Harbinder Singh @ Bhupinder Singh Bhinda disclosed that be along with his uncle Jaspal Singh (co-accused) his son Gurjot Singh @ Goti was involved in selling heroin. The deceased Harpreet Singh @ Happy was also their relative and he was also an addict to heroin. The deceased Harpreet Singh used to come to the house of the present petitioner for consuming heroin. They all Le. Harpinder Singh @ Bhupinder Singh, Jaspal Singh, Gurjot Singh and Kulwinder Kaur used to administer injection of heroin to Harpreet Singh in order to check capacity of heroin. On 08.02.2023 also the deceased Harpreet Singh was administered injection of heroin and he died at the spot. Thereafter they all in connivance with each other had thrown dead body of the deceased Harpreet Singh near mobile tower outside the village. The accused Harbinder Singh @ Bhupinder Singh @ Bhinda was produced before the jurisdictional Learned Court and was sent to Judicial custody.”

6. A perusal of the above, does not find active role of the petitioner in crime or injecting drugs to the deceased. On prima facie analysis of the nature of allegations, petitioner being a woman with clean criminal antecedents, and other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration at this stage. Furthermore, the petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course-correct.

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

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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, Neutral Citation No: 2022:PHHC:003277, [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 investigator/SHO. 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 investigation 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. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation

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occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

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. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of one kilometer from the victim's home till the recording of the statements of all non-official and informal witnesses in the trial.

This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (Cr.) 458; and Aparna Bhatt v. State of Madhya Pradesh, 2021 SCC Online SC 230.

15. 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

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canceled due to non-appearance or breach of conditions.

16. 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."

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. 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 and the victim, 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.

24. *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

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Whether speaking/reasoned: Yes
Whether reportable: No.