

224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-909-2022
Date of decision: 10.05.2023

Sukhdev @ Sukhdev Tewatia ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Sekhon, Advocate for the applicant-appellant.

Mr. Manish Bansal, Sr. DAG, Haryana.

Mr. Khalid Tauru, Advocate for respondent No.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
435	08.12.2021	Gadpuri	323, 324, 34/379-B/506 IPC and 3 of SCST Act.

1. The appellant apprehending arrest in the FIR captioned above, had come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. Vide order dated 23.05.2022, the appellant was granted interim protection, which is continuing till date.

3. The appellant's counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the appellant. He further states on instructions that the appellant has no fire-arms as such condition of surrendering the fire-arms, imposed vide order dated 03.05.2023, is not applicable to him.

4. The State's counsel opposes the bail.

REASONING:

5. Thus, there would be no justification to keep this bail pending waiting for the proper investigation. The appellant was granted interim protection, and during the interregnum, there is no allegation that he had hampered the investigation, or despite being called to join the investigation, he did not appear before the investigator. Given

the above, there would be no justification to discontinue the interim protection, and the same is made absolute subject to the appellant complying with the terms of the bail order.

6. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. **It is clarified that in case the appellant do not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the appellant to reform and live a normal life but did not mend his ways.**

7 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 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. 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."

Petition allowed in aforesaid terms. Interim order dated 23.05.2023 is made absolute subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

10.05.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.