

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27878-2022
Reserved on: 12.04.2023
Pronounced on: 11.05.2023

Avtar Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gaurav Daata, Advocate and
Mr. Ravinder Phogat, Advocate for the petitioner

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
240	16.09.2021	Anaj Mandi, Patiala, District Patiala	420, 465, 468, 471, 120-B, 409 IPC r/w sections 66, 66-D of Information Technology Act, 2000

1. The petitioner apprehending arrest in the FIR captioned above, had come up before this Court on the allegations of solving online papers from outside through screen sharing, under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 01.07.2022, the petitioner was granted interim protection, which is continuing till date.
3. The 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. He further states on instructions that the petitioner has voluntarily complied the conditions of the order dated 14.03.2023.
4. Counsel for the State opposes the bail.

REASONING:

5. Thus, there would be no justification to keep this bail pending waiting for the proper investigation. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he 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 petitioner 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 petitioner 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 petitioner 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 01.07.2022 is made absolute subject to strict compliance of all above terms and conditions as well as conditions imposed vide order dated 14.03.2022, failing which, it shall be permissible for the State to seek cancellation of bail. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

11.05.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.