

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 31192 of 2022
Reserved on 18.01.2023
Pronounced on: 30.01.2023

Kanwaljeet ThapaPetitioner(s)

Vs.

State of HaryanaRespondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. G.S. Sandhu, Advocate for the petitioner(s).

Mr. Rajat Gautam, DAG, Haryana.

Ms. Kamlesh, Advocate for
Mr. Parminder Singh, Advocate for the complainant.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
819	30.10.2020	Sadar Karnal	406, 420 IPC and 24 of Immigration Act and sections 370, 384 IPC added later on)

1. The petitioner apprehending arrest in the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 28-09-2022, the petitioner was granted interim protection by a co-ordinate bench of this court, which is continuing till date. It is appropriate to extract the reasoning of the said order, which reads as follows:

“Be that as it may, after hearing learned counsel for the parties and perusing the record available before me, I find that from the version of the FIR, which is a detailed version, there is nothing to reflect that petitioner is a receiver of any amount from the complainant or his wife or he has played any active role or was member of hatching conspiracy, ever since the beginning. Therefore, custodial interrogation of the petitioner would not be necessarily required in the present matter. It is also relevant to notice that on asking of the Court, there is nothing to point out by the learned State counsel as well as learned counsel for the complainant that petitioner is involved in any other matter of similar nature regarding duping the innocent people on the pretext of sending them abroad.

Accordingly, the petitioner is directed to appear before the Investigating Agency on 03.10.2022 at 11:00 a.m. and join the investigation, and thereafter, he shall appear as and when required to do so by the Investigating Agency. In the event of his arrest, the petitioner shall be released on ad-interim bail, subject to his furnishing bail bonds

to the satisfaction of the Arresting Officer. The petitioner shall also abide by all the conditions laid down under Section 438(2), Cr.PC.

Adjourned to 18.01.2023."

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 and family.

4. The State's counsel opposes the bail.

REASONING:

5. Given the reasoning of the co-ordinate bench, 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 had intimidated the victim or victim's family or the witnesses or 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 petitioner complying with the terms of the bail order and the following additional conditions.

6. Within fifteen days from today, the petitioners shall forward to the Investigator/SHO and the complainant/victim(s) on notarized affidavits, the complete details of bank account numbers with addresses, fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand ***.If the petitioners fail to comply with this condition, then on this ground alone. In that case, the bail might be canceled, and the complainant may file any such application for the cancellation of bail, and State shall file the said application.***

7. 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.

8. 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 does 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.***

9. The conditions mentioned above imposed by this court are to endeavour that the accused tries to reform, 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 is made absolute subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

30.01.2023

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Whether speaking/reasoned:	Yes
Whether reportable:	No.