

CRM-M-37791-2022

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37791-2022
Decided on: 12.01.2023

Tofik @ Tofik Mohammad ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Saleem Ahmed, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
241	02.08.2022	Nagina, District Nuh	148, 149, 332, 353 & 506 IPC

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 25.08.2022, the petitioner was granted interim protection by Co-ordinate Bench of this Court, which is continuing till date.
3. The State's counsel opposes the bail on the ground that during pendency of the present petition, two more FIRs have been registered against the petitioner.
4. At this stage counsel for the petitioner submits that he would have no objection if this Court grants bail by imposing strict conditions. The petitioner's counsel 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.

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 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

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bail order and the following additional conditions.

6. 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 release from prison 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.

7. 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 500 meter 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 (CrL.) 458; and *Aparna Bhatt v. State of Madhya Pradesh*, 2021 SCC Online SC 230.

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 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

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of rights and liberties must be eschewed.”

Petition allowed in aforesaid terms. Interim order dated 25.08.2022 is made absolute subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

12.01.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.