

CRA-S-1994-2023

Neutral Citation No.:2023:PHHC:111204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Reserved on: 16.08.2023
Pronounced on: 24.08.2023

Amit @ Hakla ...Appellant

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Raj Kapoor Malik, Advocate for the appellant.

Mr. Rajat Gautam, Addl. AG, Haryana.

Mr. Rishi Nijhawan, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
300	20.10.2021	Sadar, Kaithal	148, 149, 201, 302, 323, 324, 325, 506 IPC and Section 3(2)(va), 3(2)(v) of SC/ST Act

Criminal Case no. before trial Court	CIS (B.A.) No.706 of 2023 CNR No. HRKH01-004222-2023 Date of decision: 21.07.2023
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1. The appellant, incarcerating upon his arrest in the FIR captioned above, came up before this Court under Section 14A of SC/ST Act, seeking bail.
2. In paragraph 18 of the bail petition, the accused declares that he has no criminal antecedents.
3. Appellant's counsel prays for bail by imposing any stringent conditions. The appellant contends that the pre-trial incarceration would cause an irreversible injustice to the appellant and family.
4. The State as well as counsel for the complainant oppose the bail.

REASONING:

5. The prosecution case is that on 20.10.2021, the police received an information that one Kalia Ram was admitted in Government Hospital, Kaithal after sustaining

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injuries in a fight. On receiving this information from hospital, the investigator met the complainant Kuldip who was also an injured person. He made a complaint to the investigator that earlier on 18.10.2021, the appellant-Amit who was driving his tractor, had tried to run over the same on him, however he had narrow escaped. When his brother had objected to the said action then Amit extorted a threat and intimidated them. Subsequently, their family members informed and apprised the Ex-Sarpanch of the village.

6. On the next day i.e. 19.10.2021, at around 8-9 pm, the appellant-Amit, Sumit @ Kala, Khusla, Bona, Deepad, Neerja, Bimal and another lady who is wife of one Paul, reached on the spot on motorcycles and they were carrying gandasi, danda and bricks. On reaching there, all of them gave beatings to the complainant as well as his father. The accused-petitioner attributed gandasi blow on head of the deceased and stated that after receiving said blow, the blood oozed out from head of the deceased. The complainant had also attributed two blows on him from gandasi inflicted by the appellant-Amit.

7. Perusal of the FIR reveals that major offence which are arraigned as Section 302 IPC and other offences under offences under Sections 323, 324 & 325 IPC. It shows that the blows inflicted by the appellant on the complainant, the prosecution which was launched was under Section 324 IPC and not under 307 IPC, apart from the offence under SC/ST Act. Regarding the injury inflicted on the deceased prior to his death, which had taken place on 04.01.2022, the offence which were added in FIR were not under Section 307 or 302 IPC but were under Section 324 IPC, apart from other offences. On receiving information about the death of Kalia Ram, offence under Section 302 IPC was inserted. The incident had taken place allegedly on 19.10.2021, whereas, the complainant expired on 05.01.2022 i.e. after a gap of 2 ½ months.

8. It is appropriate to refer to para 13 of the reply dated 08.08.2023, which reads as under:-

“13 That on 01.02.2023, opinion regarding the injuries of Kalia Ram was sought from Board of doctors, the report is as follows:

a. After going through the above stated documents it is pertinent to mention that during postmortem examination, no fresh injury was present over the dead body. The injuries in question were sustained about three months back prior to postmortem examination. There is no significant treatment record of the deceased available except the bed head ticket/Indoor treatment file from civil hospital Kaithal, where the deceased remained admitted and treated from dated 19.10.2021 to 24.10.2021 due to the injuries inflicted upon him. During postmortem examination, pressure sores/bed sores or infected ulcerations with foul smelling pus discharge were present over the left leg, left foot, right buttock and right foot regions of dead body. Pressure sores/ bed sores

signifies that the deceased remained bedridden/immobilized for a significant period of time, but it may be due to injuries suffered about three months back or it may be due to some other debilitating condition. Visceral histopathological examination report from department of pathology. Maharaja Agrasen Medical College Agroha (Hisar) has revealed that the internal organs of the deceased were suffering from multi organ dysfunction along with cardiac pathology. The cardiac pathology is a pathological condition of heart and its etiology is not related to the injuries suffered by the deceased, but the multi organ dysfunction can occur either due to multiple infections in some pathological condition or it can be remote complications of injuries suffered, if a person remains bedridden/immobilized for a significant period of time. Therefore keeping in view and after perusal of all the above stated records pertaining to the case, the undersigned boards of the doctors is of the opinion that " in this case the cardiac pathology was a pathological condition and primary cause of death of a deceased person. how ever it could not be ascertained with certainty that the multi organ dysfunction of the deceased person was due to the multiple infections with some other cause or it might be due to as alleged i.e due to remote complications of injuries suffered about three months back, as injuries can accelerate or precipitate progression of a fatal disease condition degeneration in person or the process of with already prevailing pathological condition of some vital organ of body or in a person with already compromised state of health."

9. After conducting post-mortem, the doctor opined that **after perusal of all the above stated documents the undersigned ‘board of doctors’ is of the opinion that the cause of death in this case is Cardiac Pathology in combination with multi organs dysfunction as per the visceral histopathological examination report.** Since the cause of death is Cardiac Pathology which is pathological condition of heart and its etiology is not prima facie related to the injuries received by the deceased on 19.10.2021, as such on this ground alone, the appellant’s further incarceration is not justiciable.

10. Given the cause of death as per Postmortem Report, viz-a-viz pre-trial custody, coupled with the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order. Furthermore, the appellant is a first offender, and one of the relevant factors would be to provide an opportunity to course correct.

11. 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

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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 require, 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 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 appellant who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the appellant to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *GudikantiNarasimhulu 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:INSC:107 [Para 7]**, (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.

12. 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 v. State (NCT of Delhi)*, **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

13. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the appellant 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.

14. In *Madhu Tanwar and Anr. v. State of Punjab*, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial

intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

15. Given above, provided the appellant is not required in any other case, the appellant shall be released on bail in the FIR captioned above, in the following terms:

(a). Appellant 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 court, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). Appellant to hand over to the concerned court 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 favor of the 'Chief Judicial Magistrate' of the concerned district, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the appellant to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

(c). Such court shall have a lien over the funds 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.

(d). The appellant 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 of this bail order.

(e). While furnishing personal bond, the appellant shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number of an Indian citizen, (If available), when the attesting officer/court deems appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

16. The appellant 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.

17. Given the nature of the allegations and the other circumstances peculiar to this case, the appellant 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 appellant shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

18. Till the completion of the trial, the appellant 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.

19. Given the nature of the allegations and the other circumstances peculiar to this case, the appellant shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of five-hundred meters 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. The State of Madhya Pradesh, **2021:INSC:192**, 2021 SCC Online SC 230.

20. During the trial's pendency, if the appellant 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 canceled due to non-appearance or breach of conditions.

21. 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, **2022:INSC:735 [Para 28]**, 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."

22. Any Advocate for the appellant and the Officer in whose presence the appellant puts signatures on personal bonds shall explain all conditions of this bail order in any language that the appellant understands.

23. If the appellant finds the bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the appellant 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 appellant may file a reasoned application before this Court, and after taking cognizance, even to the

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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.

24. 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.

25. 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 appellant notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

26. 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.

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

26. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the appellant 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.*

Appeal is allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

24.08.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.