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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45142-2022

Date of decision: 12.04.2023

Rajinder Kumar @ Harjinder Kumar Sharma and anr. ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Riffi Birla, Advocate for the petitioners

Mr. Virat Rana, AAG, Punjab

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
81	19.07.2022	Arniwala, District Fazilka	306/34 IPC

1. The petitioners 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 petitioners were granted interim protection, which is continuing till date.
3. The petitioners’ counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioners. She further states on instructions that the petitioners have joined the investigation.
4. Instructions filed by the State counsel is taken on record.

REASONING:

5. I have heard counsel for the parties as well as given the reply given by the State, there would be no justification to keep this bail pending waiting for the proper investigation. The petitioners were granted interim protection, and during the interregnum, there is no allegation that they had intimidated the victim or victim’s family or the witnesses or that they had hampered the investigation, or despite being called to join the investigation, they do 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 petitioners complying with the terms of the bail order and the following additional conditions.

6. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioners shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

7. Till the completion of the trial, the petitioners 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. .
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

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 petitioners 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 petitioners 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 of rights and liberties must be eschewed.”

Petition allowed in aforesaid terms. Interim order dated 28.09.2022 is made absolute subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

12.04.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.