

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-47577-2022 (O&M)

Reserved on: 04.01.2023

Pronounced on: 16.01.2023

Baljinder Kaur & another

... Petitioner(s)

Versus

State of Punjab

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. APS Deol, Sr. Advocate with
Mr. Himmat Singh Deol, Advocate
for the petitioner(s).

Mr. Prashant Manchanda, Addl.A.G., Punjab
Mr. Ferry Sofat, Advocate
for the State of Punjab.

Mr. Anupam Gupta, Sr. Advocate with
Mr. Gautam Pathania, Advocate and
Mr. Sukhpal Singh, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
180	10.7.2021	Division no.6, Commissionerate of Police, Ludhiana.	376, 354, 354A, 506, 120-B IPC.

1. The petitioners, incarcerated upon their arrest in the FIR captioned above, for facilitating the main accused, Simarjit Singh Bains, by facilitating rape and providing accommodation for committing rape upon the prosecutrix, who is an adult woman, have come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 10 of the bail petition, the accused declares that they have no criminal antecedents.
3. The petitioners contend that the pre-trial incarceration would cause an irreversible injustice to them and their families. The petitioners’ counsel seeks bail because the prosecutrix had consensual coitus with the main accused, Simarjit Singh Bains. However, during the trial, he reserves his right to abandon this plea if so advised. Petitioners’ counsel further submitted that even if the petitioners provided

accommodation to accused Simarjit Singh Bains, it still does not mean that he could not have taken her to any other place or that coitus had taken place only in the premises of the petitioners, whereas the prosecutrix was allegedly subjected to sexual intercourse on 9-10 occasions.

4. The State opposes bail because the petitioners are close associates of the main accused, Simarjit Singh Bains, and in case they are released on bail, they are likely to influence the trial. As such, the petitioners should not be released on bail.

5. The complainant's counsel also opposes the bail on the ground that the allegations are serious in nature and the offence is heinous.

REASONING:

6. The petitioners are middle-aged women, and the only allegation against them is that they provided accommodation to the main accused, Simarjit Singh Bains, where they brought the prosecutrix and indulged in coitus with her. The prosecutrix also mentions other places where the main accused, Simarjit Singh Bains, had sexual intercourse with her. Furthermore, there is no allegation that the prosecutrix had asked the petitioners to rescue her or had objected to being taken to their houses. As per paragraph 9 of the bail petition, the petitioners are in custody since 11.7.2022. Given the nature of allegations, and injuries inflicted by the petitioner, 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. Any further discussion is likely to prejudice the prosecution's case, and as such, this Court refrains from observing anything. It is sufficient to say that further pre-trial incarceration would not be justifiable.

7. 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, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

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

9. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

10. Given above, provided the petitioners are not required in any other case, they shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioners to furnish personal bond of Rs. Ten thousand (INR 10,000/-) each; AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-) each, to the satisfaction of the concerned court, and in case of non-availability, any nearest ILlaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b) Petitioners to hand over to the concerned court a fixed deposit for Rs. Ten Thousand only (INR 10,000/-) each, 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. Said fixed deposit may be made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioner's account.

(c). Such court shall have a lien over the deposit 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). It shall be the total discretion of the petitioners to choose between surety bond and fixed deposit. It shall also be open for the petitioners to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(e). On the reverse page of personal bond, the petitioner(s) shall mention her/his permanent address along with the phone number, preferably that number which is linked with the AADHAR, and e-mail (if any). In case of any change in the above particulars, the petitioners shall immediately and not later than 30 days from such modification, intimate about the change to the concerned police station and the concerned court.

(f). The petitioners 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 also of this bail order.

11. The petitioners 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.

12. 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 release from prison 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.

13. 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.

14. During the trial's pendency, if the petitioners repeat or commit 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.

15. 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, 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."

16. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioners understand.

17. If the petitioners find bond amount beyond social and financial reach, it may be

brought to the notice of this Court for appropriate reduction. Further, if the petitioners find 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 petitioners may file a reasoned application before this Court, and after taking cognizance, even to the 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.

18. 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.

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

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

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

(ANOOP CHITKARA)
JUDGE

January 16, 2022
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No