

210 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CRM-M-48776-2022
Date of decision: 01.05.2023

Gurbakhsh Singh and others ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Salil Dev Singh Bali, Advocate for the petitioner

Mr. Harsimar Singh Sitta, DAG, Punjab.

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ANOOP CHITKARA, J.

Complaint No.	Dated	Pending in the Court of	Sections
CIS No.SC/22/2019	-	Judge, Special Court-cum-Addl. District and Sessions Judge-cum-Fast Tract Court	3 of the Schedule Casts and Schedule Tribes (Prevention of Atrocities) Act, 1989 and sections 307, 324, 323, 450, 148, 149, 211, 194, 167, 343, 211, 217, 506, 511 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 17.11.2022, 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. He further states on instructions that the petitioners have voluntarily complied with the conditions imposed vide order dated 24.04.2023 and submits that being the neighbourers, it is not possible for the petitioners to stay away at a distance of one km. away from the house of the complainant and seeks modification of condition No.2 of the order dated 24.04.2023.

4. The State's counsel opposes the bail.

REASONING:

5. Thus, there would be no justification to keep this bail pending waiting for the proper investigation. The petitioner were 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.

6. Given the contention of counsel for the petitioners, condition No.2 of order dated 24.04.2023 is modified to the extent that the petitioners shall not enter the property, workplace, and the residence of the complainant till the recording of the statements of all non-official and informal witnesses in the trial.

7. 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 do 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.**

8. 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 17.11.2022 is made absolute subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

01.05.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.