

CRM-M-52014-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52014-2022
Reserved on: 21.04.2023
Pronounced on: 17.05.2023

Kuljit Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sidhant Vermani, Advocate for the petitioner.

Mr. H.S. Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
212	03.09.2022	Chheharta, District Amritsar	307/452/323/324 IPC

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State opposes bail.

REASONING:

5. The prosecution's version is mentioned in paragraphs 5 & 6 of the reply, which reads as follows:

“5. That it is submitted that during the course of investigation of the present case FIR No. 212/2022 (supra), statement of the victim/injured Nirmaljit Kaur was recorded on 7.9.2022, wherein she alleged that on 2.9.2022 at about 7:30 PM, she along with her son was present at her house then the present petitioner entered into her house and took out kirch from his flank and and Nirmaljit Kaur with an intention to kill her and caused injuries on

both sides of her neck, she raised her left arm in her safety then one blow of kirch landed on her left arm. The son of Nirmaljit Kaur shouted then present petitioner Kuljit Singh pushed down Nirmaljit Kaur and ran away from spot. The photographs of the injured Nirmaljit Kaur showing nature of her injuries are annexed herewith as Annexure R-1 for the kind perusal of this Hon'ble Court.

6. That it is submitted that during the course of investigation of the aforesaid case FIR No. 112/2821 (supra), the present petitioner Kuljit Singh was arrested on 11.09.2022. The petitioner Kuljit Singh was produced before the Learned Court of competent jurisdiction and his police remand was granted by the Learned Court. During custodial interrogation, the present petitioner suffered disclosure statement before the Investigating Officer that about 4 to 5 months ago. Nirmaljit Kaur had spoken very bad language to the petitioner Kuljit Singh and his parents and had extended them threats to kill. Therefore, the petitioner Kuljit Singh was very angry and due to this grudge, on the day of occurrence, firstly the present petitioner Kuljit Singh had gone to the house of Nirmaljit Kaur on the pretext of giving sweets as he had purchased new plot. Thereafter the present petitioner Kuljit Singh again went to the house of the complainant and caused injuries on neck and arm of Nirmaljit Kaur with an intention to kill her. The son of Nirmaljit Kaur started shouting in the street and the present petitioner got scared. The petitioner Kuljit Singh in order to hide his crime, himself caused injury on his left arm, due to which left arm of the petitioner Kuljit Singh got drenched in blood. The present petitioner Kuljit Singh further disclosed that he concealed the weapon of offence i.e. Kirch in bushes near bridge Mahal. Therefore, the blood stained kirch used in commission of crime was recovered from the above said place on the basis of disclosure statement and identification made by the present petitioner Kuljit Singh."

6. The stand of the accused/petitioner is stated in paragraphs 4 to 6 of the petition, which read as follows:

"4. That the version as stated in the FIR is absolutely false and a concocted one and the real scenario of the present occurrence is as such that the complainant and his wife are residing in a house which is exactly opposite to the house of the petitioners. The complainant of the present case in fact had recorded a private video of the petitioner and his wife with which he & his wife were threatening & blackmailing the petitioner with by saying that they will make such private video of theirs viral on social media and if the petitioner wants him to delete such video & to save themselves from the embarrassment then he should pay them Rs 5 lacs. The petitioner did not go down to such attempted extortion of the complainant and requested them to delete such video but they straight away refused to do so.

5. That thereafter when the petitioner made it clear that he is not going to pay anything to the complainant and his wife and further he is going to approach the appropriate authorities for taking appropriate legal action against them then on the alleged date of occurrence the complainant and his wife called the petitioner to their home on the pretext of an amicable settlement but upon reaching their house they threatened the petitioner with dire consequences if the petitioner tries to

reach out to Police or any other authorities and again asked for such for such amount of money but when the petitioner refused to listen to them then both the complainant and his wife attacked the petitioner with a knife and in fact the petitioner suffered deep sharp cuts / injuries from such attack by the complainant and his wife. In-fact the petitioner was there after admitted to the hospital on dated 03.09.2022 and he remained admitted in the hospital for about 7 days with him being discharged on dated 10.09.2022 since the injuries received were very serious. Copy of certain photographs & medical record of the petitioner is annexed herewith with as Annexure P-2 & P-3.

6. That in-fact the wife of the petitioner had also submitted a written complaint against the complainant & his wife for such illegal acts & attack on the petitioner vide a representation bearing no 1844PC/COP of dated 09.09.2022 to the Commissioner of Police Amritsar but upon such representation no action has been taken till date. Copy of such representation is also annexed herewith as Annexure P-4.”

7. The petitioner has annexed photographs of sutures to corroborate the injury; however even as per FIR, it is mentioned that the petitioner's arm was bleeding. Due to non-explanation of injury on the petition, his further pre-trial incarceration is not justifiable more particularly when he has already remained in prison from Sep 11, 2022. Given above 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 petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course-correct.

8. 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 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 requires, 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 petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course

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of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In Gudikanti Narasimhulu 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) 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.

9. 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.

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

11. In **Mahidul Sheikh v. State of Haryana, Neutral Citation No: 2022:PHHC:003277**, [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.

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

(a). Petitioner 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, any nearest Ilaqa 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) Petitioner 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. 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 petitioner to choose between surety bond and fixed deposit. It shall also be open for the petitioner 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 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 petitioner 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 petitioner 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 also of this bail order.

13. The petitioner 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.

14. 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.

15. Till the completion of the trial, the petitioner 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.

16. 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 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 (Cr.) 458; and *Aparna Bhatt v. State of Madhya Pradesh*, 2021 SCC Online SC 230.

17. During the trial's pendency, if the petitioner 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.

18. 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."

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

20. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioner 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 petitioner 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.

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21. 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.

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

23. 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.

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

25. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, without any delay. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

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

17.05.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.