

CRM-M-7428-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7428-2023
Reserved on: 13-02-2023
Pronounced on: 01-03-2023

Sajan Kumar @ Sajan Bhatti @ Kali ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. Vipul Aggarwal, Advocate for the petitioner.
Mr. Sanish Girdhar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
15	31.01.2021	Basti Bawa Khel, District Police Commissionerate Jalandhar	307, 120-B, 148, 149 IPC (Sections 323, 324, 326 IPC added subsequently

1. The petitioner apprehending arrest in the FIR captioned above, on the allegations of assaulting the victim, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 8 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. Petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. State's counsel opposes the bail.

REASONING:

5. After being arraigned as an accused in the above-mentioned FIR, the petitioner absconded and subsequently the concerned JMJC Jalandhar, vide order dated 13-12-2021, declared him as a proclaimed offender. The petitioner challenged such order before this court and vide order dated 8-12-2022, passed in the interim application

CRM-M-7428-2023

ordinate bench of this court had stayed the operation of the aforesaid PO order dated 13-12-2021. Given above, as on date, no order is in force declaring the petitioner as a proclaimed offender. Consequently, there is no judicial restriction to consider the present application for anticipatory bail filed under section 438 CrPC.

6. Brief facts relevant to decide the present bail petition are that on Jan 30, 2021, Shri Hanuman, father of the victim, complained to the police that the petitioner and his accomplices had threatened his son Vishal with dire consequences. On Jan 30, at 5 pm, the petitioner Sajan called his son, and along with other boys, took his son to New Shahid Babu Labh Singh Nagar, at Jalandhar, where Aman, Fateh, Karan, Tinu, and 8-10 more boys were present. All those boys attacked his son with swords, datar, iron rods, and brutally assaulted him. Based on this, the police arraigned the petitioner as an accused.

REASONING:

7. The Assistant Commissioner of Police, West, Jalandhar, conducted an enquiry, and gave its report Annexure P-2. In the conclusion of the report, the Assistant Commissioner of Police found that the petitioner was not found to be involved in the quarrel. Given this, there would be no justifiability for custodial or pre-trial incarceration at this stage. Furthermore, the petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course-correct. Even a prima facie perusal of paragraph 2 of the bail petition needs consideration for bail.

8. 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.

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 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

CRM-M-7428-2023

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned investigator/SHO. Before accepting the surety, the concerned officer must satisfy that if the accused fail to appear in court, then such surety can produce such accused before the court.

OR

(b) Petitioner to hand over to the concerned investigator/SHO 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 favour of the 'Chief Judicial Magistrate' of the concerned district. The 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). In case of the launching of the prosecution, the said fixed deposit be forwarded to the concerned court along with the police report/challan under 173 CrPC.

(d). 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.

(e). It shall be the discretion of the petitioner to choose between surety bonds and fixed deposits. 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.

(f). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that numbers 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.

(g). 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.

11. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

12. 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

CRM-M-7428-2023

them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

13. 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 today 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.

14. 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.

15. 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 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 (CrI.) 458); and Aparna Bhatt v. State of Madhya Pradesh, 2021 SCC Online SC 230.

16. 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.

17. The conditions mentioned above imposed by this court are to endeavour that the parties do not retaliate 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."

18. 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.

CRM-M-7428-2023

19. 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.
20. 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.
21. 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.
22. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
23. 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.
24. *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

March 01, 2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.