

CRM-M-4908-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4908-2024
Reserved on: 07.08.2024
Pronounced on: 30.08.2024

Rahul ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sanchit Punia, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
633	23.08.2023	Hansi City, District Hansi	147, 148, 149, 325, 365, 379- B IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, seeking anticipatory bail.
2. In paragraph 14 of the bail petition, the accused declares that he has no criminal antecedents.
3. Vide order dated 31.01.2024, petitioner was granted interim bail and the said order is continuing till date.
4. Facts of the case are being taken from reply dated 03.08.2024, which reads as under:-

“2. That the brief facts of the case are that on 22.08.2023, ASI Jai Singh and EHC Gamdoor were present in the area of Police Post Sector-6, HUDA Hansi. When information was received from the Police Control Room that a boy had been kidnapped by 5-6 boys from the front of Nehru College, Barwala Road, Hansi. upon the information police officials reached at Nehru College, Barwala Road, Hansi where it was revealed that the abducted boy was named Amit son of Balbir Singh. His father was contacted, who informed that his son has been abducted by Monu @Gaurav Poonia, Jacha @ Jai Chand and their accomplices. They had inflicted injuries upon him and also snatched away his mobile phone, chain and money. They had got their son admitted at Bharat Hospital, Hisar. Police Officials reached at Bharat Hospital, Hisar where the doctor opined the injured unfit to make the statement. Statement of Balbir Singh, father of injured was recorded wherein he alleged that on

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22.08.2023 at about 10:30A.M. his son had gone to Hansi to take medicines for some urinary tract disease. Anil resident of Bhatla called him and informed that 5-6 boys had abducted Amit in a car from the front of Nehru College, Hansi. Upon the information, he reached at Hansi. There he received a telephonic call from an ambulance driver that his son was admitted in Civil Hospital, Tohana and had been referred to MAMC, Agroha. Upon the information, he alongwith his nephew Kuldeep reached at Tohana. There Amit told him that he had gone to take medicines at Hansi and was sitting on a motor-cycle outside Nehru College. Suddenly two cars arrived, three boys alighted from the car and dragged him in one of them in the moving car, they snatched his mobile phone, silver chain of 50 grams and Rs.6,700/-. When they reached near Tohana, they gave beatings to him Lathi, Dandas, Hammer and Sharp-edged Gandasa and threw him in the fields. When he raised a hue and cry, some boys who were taking bath in the canal, found him and called the ambulance. Amit had become unconscious due to the injuries. He pleaded for appropriate action against the culprits. Thereafter, copy of MLR of the injured person bearing No. MLR/TOHANA/218/2023/08 was taken into possession by the police official. In which six injuries were mentioned by the doctor and doctor opined that injury no.1 to 4 are advise X-Ray and Ortho Opinion, Injury No. 5 advise X-Ray Surgery Ortho Opinion and Injury No. 6 Ortho injury can be found during further course of treatment, copy of the same is annexed herewith as Annexure R-1. Upon this information formal FIR No. 633 under sections 147, 148, 149, 365, 379 B IPC was registered at Police Station City Hansi.”

5. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

6. The petitioner's counsel argued that petitioner is a student aged 19 years and was not named in the FIR and he was nominated as accused on the disclosure statement of co-accused Aman. He further submitted that statement u/s 161 CrPC mentioned about Rahul s/o Balwan and one Rahul Audh, which does not match with the description of petitioner.

7. The State opposes bail and has referred to para 9 of the reply which reads as follows:

“That, the allegations leveled against the present petitioner- accused are that he alongwith other co-accused had abducted injured Amit on 22.08.2023 and had given beatings with danda and sharp- edged weapons. It is pertinent to mention here that investigating officer has carefully watched the video of fight which was produced by the injured father i.e. complainant in a pendrive. In this video present petitioner-accused namely Rahul son of Richhpal and co- accused Gourav @ Monu, Aman, Jacha @ Jai Chand and Rahul son of Balwan Singh are clearly seen inflicting injuries by danda, axe and hammer to injured Amit. The allegations against the present petitioner-accused are serious in nature. It is specifically submitted that danda was recovered from the present

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petitioner-accused which was used in the commission of offence for inflicted injuries to the injured Amit by present petitioner-accused. In the given circumstances, apprehension of prosecution that the present petitioner-accused may try to influence or intimidate the witnesses, if anticipatory bail of the present petitioner may be absolute. There is apprehension of absconding of petitioner from trial and may tamper with the evidence, if the petitioner anticipatory bail may be absolute, hence the petitioner is not entitled for any relief and the petition of the petitioner deserves to be dismissed.”

8. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had intimidated the witnesses, hampered the investigation, or, despite being called to join the investigation, did not appear before the investigator. Given the above, there would be no justification to discontinue the interim protection, which is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.

9. Given the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage.

10. The petitioner is aged 19 and has no criminal antecedents, and primarily on these grounds, and 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.

11. This order is subject to the petitioner's complying with the following terms. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

12. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim until the statements of all non-official and informal witnesses in the trial are recorded. 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. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

13. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, and their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the

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closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and 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. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

14. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], 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."

15. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

16. A certified copy of this order would not be needed 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. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

17. Petition allowed in terms mentioned above and interim order dated 31.01.2024 is made absolute. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.