

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

217

CRM-M-9752 of 2024  
DATE OF DECISION :- 06.03.2024

Hari @ Harjap Singh Mahi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Mr. Balram Singh, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

\*\*\*

SUMEET GOEL, J. (Oralt

Short reply by way of affidavit of Sh. Jaspreet Singh, PPS,  
Deputy Superintendent of Police, Sub Division Phagwara, District  
Kapurthala filed in the Court today. The same be taken on record.

1. On 28.02.2024, the following order was passed:-

“

| FIR No. | Dated      | Police Station                                          | Sections                    |
|---------|------------|---------------------------------------------------------|-----------------------------|
| 87      | 21.12.2023 | Rawalpindi,<br><br>Phagwara, District<br><br>Kapurthala | 354, 427, 452, 148, 149 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 7 of the bail application, the accused declares the following criminal antecedents:

| Sr. No. | FIR No. | Year | Offences                                             | Police Station         |
|---------|---------|------|------------------------------------------------------|------------------------|
| 1.      | 74      | 2013 | 336, 323, 506, 34 IPC                                | Rawalpindi, Kapurthala |
| 2.      | 66      | 2014 | 323, 336, 506, 148, 149 IPC and 25/27/54 of Arms Act | Rawalpindi, Kapurthala |
| 3.      | 87      | 2017 | 451, 427, 148, 149 IPC                               | Rawalpindi, Kapurthala |
| 4.      | 24      | 2020 | 379-B IPC                                            | City, Kapurthala       |

3. Facts of the case are being extracted from FIR which is annexed as Annexure P-1 with the petition and reads as under:-

*“Statement of Smt. xxx wife of xxx resident of village Jagpalpur PS Rawalpindi District Kapurthala, age 29 years [mob.no.](#) 70876-86105 has stated that I am a resident of the said address and doing household work. Today on 21.12.23 time around 5:30 PM I and my jathani (sister in law) xxx w/o xxx were present in the house and I was doing work in the kitchen then harry s/o Charanjeet and Gary s/o Kashmir Singh r/o Jagpalpur along with them some unknown person entered into our house harry touched my modesty. I am 8 months pregnant and he kicked in my stomach I felt on the bed in the room and harry and gary were having datar with it they started breaking home articles. Washing machine lying outside the bathroom and LED in the house broke. The glasses in the grill and iron rod of of the window were also broken. I and my jethani made lot of noise but harry again came in and open the cupboard in the room and took Rs. 50,000/- and gold chain. This destruction has been done by all of them we kept shouting and people around us gathered on seeing the gathering of the people, all of them ran away from the spot with their weapons. Legal action should be taken against them. The statement has been recorded read over and same is correct.”*

*4. Petitioner's counsel prays for bail by imposing any stringent conditions and states that they would have no objection to the conditions, i.e., surrender of weapons, shall not enter into the property of victim and are also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and within fifteen days undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.*

*5. The state's counsel opposes the bail and states that considering the allegations, the petitioner's custodial interrogation is necessary. While opposing the bail,*

*including the interim protection, the State's counsel further contends that given the criminal past, the accused is likely to indulge in crime again once released on bail. She further opposed the bail on the ground that the petitioner had audacity to molest a woman who was carrying pregnancy of 08 months and kicked in her stomach which led her to fell in bed.*

6. *Counsel for the petitioner submits that present FIR is counter blast to the injuries which the complainant party had inflicted to the father of the accused.*

7. *For the purpose of interim bail, the allegations made in the FIR clearly points out that it might be doubtful that if the petitioner who was carrying pregnancy of 08 months was infact pushed, then she would have gone to the hospital or doctor which she does not say. Further, she does not talk about any pain or injury. On this ground alone, the petitioner is entitled for interim bail.*

8. *In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,*

*[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.*

9. *While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy,*

*and graver the criminal history, slushier the puddles.*

11. *Without commenting on previous history, in the given allegation, without prejudice to the rights of the State, is entitled to interim bail subject to the compliance of all terms and conditions mentioned in this order. This interim shall continue only till the disposal of the petition. However, if the petition is allowed, then it shall continue for the entire trial subject, to the terms and conditions mentioned in the order.*

12. *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 require, 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 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:INSC:107 [Para 7]**, (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.*

*13. 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 v. State (NCT of Delhi), **2020:INSC:106 [PARA 92]**, (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.*

*14. 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 interim 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.*

*15. This interim shall continue only till the disposal of the petition. However, if the petition is allowed, then it shall continue for the entire trial subject, to the terms and conditions mentioned in the order.*

*16. In Madhu Tanwar v. State of Punjab, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,*

*[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.*

*[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.*

*17. 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 Investigator/SHO, before whom the bonds are required to be furnished. When the bonds are to be furnished before a Judicial Magistrate, then in case of the non-availability of the concerned Judicial Magistrate, to any other nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/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, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a similar amount.*

*(c). Such court shall have a lien over the funds 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). 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 of this bail order.*

*(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:*

|        |                                                                                                                               |  |
|--------|-------------------------------------------------------------------------------------------------------------------------------|--|
| 1<br>. | AADHAR number                                                                                                                 |  |
| 2<br>. | Passport number, (If available), when court attesting the bonds thinks appropriate or considers the accused as a flight risk. |  |
| 3<br>. | Mobile number (If available)                                                                                                  |  |
| 4<br>. | E-Mail id (If available)                                                                                                      |  |

*18. Since the State opposes the bail, the petitioner shall join the investigation only when called upon by the Investigator. It is open to the Investigators whether they want to interrogate the petitioner before the next date or not, and it shall not be binding on them to call the petitioner to join the investigation. 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 might be 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 and shall be let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc. Petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act.*

*19. 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.*

*20. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the*

*beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.*

21. *The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days from today.* The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In *Vernon v. The State of Maharashtra, 2023 INSC 655*, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

22. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, 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 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, 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. 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 offence.*

23. *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.*

24. *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. The State of Madhya Pradesh, **2021:INSC:192**, 2021 SCC Online SC 230.*

25. *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 continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.*

26. *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.*

*27. 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.*

*28. 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.*

*29. 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.*

*30. Since the State opposes the bail, the petitioner shall join the investigation as and when called upon. It is open to the Investigators whether they want to interrogate the petitioner before the next date, and it shall not be binding on them to call the petitioner to join the investigation.*

*31. 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.*

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

*33. 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.*

*List on 06.03.2024. By the next date, the concerned DySP to file a reply/response specifying the petitioner's role, failing which this court might direct the SSP/Commissioner of Police to do so."*

2. Learned State counsel, on instructions from ASI Chamkaur Singh, has stated that pursuant to the order dated 28.02.2024, the petitioner has joined investigation and is no longer required for custodial interrogation.
3. In view of above, the present petition stands allowed and the interim order dated 28.02.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.
4. This order should not be treated as “blanket” order. It will not be read granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.
5. Liberty is reserved in favour of State/complainant to move for cancellation/recall of this order in case the petitioner violates any condition stipulated under Section 438(2) Cr.P.C., 1973 or upon showing any other sufficient cause.
6. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

**(SUMEET GOEL)**  
**JUDGE**

**06.03.2024**  
*P.Singh*

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |