

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17555-2024 (O&M)
Date of order: 10.07.2024

Sukhwinder Singh
... Petitioner(s)
Versus
State of Punjab
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. P.S. Jammu, Advocate
for the petitioner(s).

Mr. G.S. Bhullar, AAG, Punjab.

Mr. Mitul Singh Rana, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
28	20.01.2024	City Kapurthala	420, 465, 467, 468, 471, 120-B IPC.

- Apprehending arrest in the FIR captioned above, the petitioner-accused, had come up before this Court seeking anticipatory bail under Section 438 CrPC.
- Although in paragraph 20 of the bail petition, the accused declares that he has no criminal antecedents, however, in paragraph no.4 of the petition, he has himself stated that he was arrested in FIR No.284 dated 8.9.2021 for offence under Section 306 IPC and was released on bail.
- Vide order dated 25.4.2024, this Court had stayed the arrest of the petitioner which is continuing till date.
- Petitioner seeks bail on the ground that the allegations against him are false and the alleged certificate was never put to use.
- State’s counsel as well as counsel for the complainant oppose the bail.
- Case of the prosecution is being extracted from status report dated 15.4.2024



filed by the State by way of affidavit of concerned DySP, which reads as under:-

"4. That complainant had got registered FIR No.284 dated 08.09.2021 under Section 304-B IPC at PS City, Kapurthala against (1) Malkeet Sandhu (2) Kulwinder Kaur (3) Kuldeep Singh (4) Bhajan Kaur (5) Karanjot Singh and (6) Sukhwinder Singh i.e. the petitioner.

5. That in the above said FIR, one mobile phone of the petitioner was seized and was sent to FSL and a report from FSL along with pen drive was received in the said case.

6. That complainant filed an application under RTI Act to receive the said pen drive and on the basis of contents of the said pen drive complainant filed a complaint for registration of present FIR. Copy of report from RTI cell and pen drive is annexed here with as Annexure R-1.

7. That the present FIR No.28 dated 20.01.2024, under Section 420/465/467/468/471/120-B was registered at Police Station City, District Kapurthala against Malkeet Sandhu and Sukhwinder Singh on the basis of complaint made by complainant Sandeep Kumar, who had submitted in his complaint that he had got registered FIR No.284 dated 08.09.2021 under Section 304 B IPC at PS City, Kapurthala against (1) Malkeet Sandhu (2) Kulwinder Kaur (3) Kuldeep Singh (4) Bhajan Kaur (5) Karanjot Singh and (6) Sukhwinder Singh i.e. the petitioner.

8. That complainant further stated that the marriage of his sister Rajni Bala was solemnized with Malkeet Sandhu on 02.02.2021 as per Sikh Rites and Ceremonies. After the marriage, the above mentioned persons started harassing/torturing his sister Rajni Bala on account of not bringing sufficient dowry and due to this, his sister was perturbed and ultimately she consumed some poisonous thing and ended her life. On the basis of his statement, the police had registered FIR under Section 306 IPC against the accused and accused at serial No.2, 3 and 6 were arrested under Section 306 IPC.

9. That complainant further stated that during investigation, one voice message and one suicide note were found in the mobile phone of his sister Rajni Bala and accordingly offence under Section 304-B IPC was enhanced. Further, complainant had submitted in his complaint that he came to know that Malkiat Sandhu is residing in Portugal (abroad) and to get his permanent residency, Sukhwinder Singh i.e. petitioner being the brother of Malkiat Sandhu wanted to get PCC (Police Clearance Certificate) of his brother Malkeet Sandhu from the office of DC, Kapurthala.

10. That complainant further stated that thereafter, Sukhwinder Singh applied for the birth certificate of his brother Malkeet Sandhu before Sewa Kender and during the investigation from the phone of Sukhwinder Singh, the PC certificate was taken out.

11. That complainant further stated that Sukhwinder Singh and his mother Kulwinder Kaur also got the BSC Economics-III certificate of his sister from Hindu Kanya College, Kapurthala by fraud.. Further, the complainant had submitted in his complaint that Sukhwinder Singh had been talking with a few persons on his phone and regarding this. recording was done. Thus, it was submitted that Sukhwinder Singh, Karanjot Singh, Malkeet NOT Sandhu and Kulwinder Kaur in connivance with each other had got a fake PC certificate and they sent the same to Malkeet Sandhu who is staying in Portugal (abroad).

12. That enquiry into the said complaint was conducted by SP(D), Kapurthala and during investigation, it was found that Malkeet Sandhu, being the brother of the present petitioner is residing at Portugal (abroad) and Malkeet Sandhu in connivance with his brother Sukhwinder Singh (applicant) in order to settle permanently at Portugal got prepared PCC (Police Clearance Certificate). Further



during investigation, it was found that Sukhwinder Singh had applied for the birth certificate of his brother Malkeet Sandhu before Sewa Kender, Kapurthala and the token number of birth certificate was 47242498 dated 03.04.2023 but Sukhwinder Singh forged the PC certificate by putting token No.47242499 dated 03.04.2023.

13. That during enquiry it transpired that when the matter was verified from the Manager, Sewa Kender, Kapurthala, he submitted the report that infact token No.47242499 dated 03.04.2023 was in the name of Mankirat Kaur and token No.47242498 dated 03.04.2023 for PC certificate was issued in the name of Malkeet Sandhu. As such allegations against petitioner and co-accused Malkeet Sandhu were duly proved, thus the present FIR was rightly registered against them.”

7. The petitioner was granted interim protection on 25.4.2024 and during the interregnum, there is no allegation that he had hampered the investigation, or despite being called to join the investigation, he did not appear before the investigator. Considering the fact that the petitioner is only 22 years of age and the fact that certificate was not for petitioner’s personal benefit, this Court feels that the petitioner is entitled to bail. Although counsel for the complainant has objected to the bail to the petitioner, however, his locus, in the present case, is doubtful.

8. Given the penal provisions imposed and the sentence provided by the Legislature, the nature of allegations and other factors and circumstances peculiar to this case, it may be appropriate to afford the petitioner a final opportunity to course correct. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail. Furthermore, a *prima facie* perusal of paragraphs 3 to 5 of the bail petition reveals sufficient grounds for granting bail.

9. 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 it 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.

10. 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.

11. 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.

12. 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.

13. Given above, provided the petitioner is not required in any other case, he 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, in case challan filed, 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 Ilaqa 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 investigator 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.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. The petitioner is directed to join the investigation within seven days and also as and when called by the Investigator, if investigation is pending or joined proceedings before the trial Court. 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.
15. 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.



16. 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.

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.

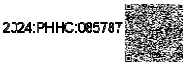
18. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

19. 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. 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.

22. 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.



23. *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

July 10, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No