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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on: 15.05.2024

Gurmit Singh @ Gurmeet Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Paramjit Singh Jammu, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
453	25.10.2023	Sirsa Sadar, District Sirsa	25 of Arms Act and 342, 395, 406 & 506 IPC

1. The petitioner incarcerated upon his arrest in the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. As per para 15 of the petition, no other case is pending against the petitioner.
3. 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 and is 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.
4. The State opposes the bail.

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REASONING:

5. Facts of the case are being taken from the reply dated 13.05.2024, which reads as under:-

"1. That the brief facts of the case are that case FIR No.453, dated 25.10.2023, under section 342/395/406/506 IPC and 25 Arms Act, PS Sadar Sirsa, District Sirsa/Annexure P-1 was registered on the complaint of complainant Kulwant Rai son of Khayali Ram, resident of Madhosinghana, District Sirsa. The relevant extract of FIR, if translated in English read as:

"Sir, it is respectfully submitted that I Kulwant Rai son of Khyali Ram is resident of Madhosinghana and used to do agricultural work. My Mahadev Mahalaxmi HPCL filling station is situated a little ahead of Dhingtania on Sirsa Jamal Road, on which I have employed two salesmen, Naresh Kumar son of Dharamveer and Naresh son of Prabhu Ram, residents of Nirban. On 23.10.2023, I went home at about 06:00 PM and both the salesmen slept inside the room at the petrol pump at about 10.30 PM, after closing the petrol pump. On the night of 23/24.10.2023, five men, two of them came on a motorcycle and three on foot, came to the petrol pump and by waking up my salesmen sleeping inside the room and got filled about 12 litters of petrol in the motorcycle from salesman Naresh son of Prabhu Ram the motorcycle and then at pistol point threatened to kill and looted away about Rs 23,600/- and the mobile phone of Naresh Kumar son of Dharamveer which had the SIM No.94166-76581 and while leaving, locked the above two salesmen in the bathroom. When I came to the petrol pump at about 8:00 in the morning, the above two salesmen told me the entire incident. I verified with the help of the cameras installed on the pump and the surrounding cameras, which I found to be true, so I have now given a written complaint to you against the unknown persons who have committed robbery. Legal action be taken against unknown persons".

2. That during the course of investigation on 25.10.2023, place of occurrence was inspected on the demarcation of eye witness Naresh son of Dharamveer, resident of Nirban, rough site plan of place of occurrence was prepared and statements of witnesses were recorded.

3. That during investigation on 25.10.2023, statement of eye witnesses Naresh Kumar son Dharamveer and Naresh son of Parbhu Ram, residents of Nirban were recorded under section 161 Cr.P.C. In their respective statements both these eye witnesses have specifically stated that the persons who robbed them are (1) Rajesh son of Darshan Singh, resident of Bajekan, (2) Sandeep @ Rinku son of Krishan Lal, resident of Bajekan, (3) Nirmal Singh @ Nimma son of Gurmeet Singh, resident of Kurangawali, (4) Yadwinder son of Baldev Singh, resident of Panihari and (5) petitioner/accused Gurmeet Singh and they can identify the abovesaid accused, if brought before them. Copy of statement of Naresh son of Dharamveer, resident of Nirban recorded under section 161 Cr.P.C. is annexed herewith as Annexure R-1.

*That on 26.10.2023, complainant Kulwant Rai produced one Pen drive *b*



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containing CCTV footage of occurrence alongwith certificate under section 65-B Indian Evidence Act, which was taken in possession. In the CCTV footage, accused (1) Rajesh son of Darshan Singh, resident of Bajekan, (2) Sandeep @ Rinku son of Krishan Lal, resident of Bajekan, (3) Nirmal Singh @ Nimma son of Gurmeet Singh, resident of Kurangawali, (4) Yadwinder son of Baldev Singh, resident of Panihari and (5) petitioner/accused Gurmeet Singh son of Balbir Singh, resident of Panihari are seen involved in the commission of crime.

5. That on 10.12.2023, accused (1) Rajesh son of Darshan Singh, resident of Bajekan, (2) Sandeep @ Rinku son of Krishan Lal, resident of Bajekan, (3) Nirmal Singh @ Nimma son of Gurmeet Singh, resident of Kurangawali, (4) Yadwinder son of Baldev Singh, resident of Panihari and (5) petitioner/accused Gurmeet Singh were joined in the investigation of the case and were arrested in the case. The complainant and eye witnesses Naresh Kumar son of Prabhu Ram and Naresh Kumar son of Dharamveer have identified the accused persons, memo of identification dated 10.12.2023 was prepared accordingly. During investigation on 11.12.2023 and 12.12.2023, all the abovesaid accused persons suffered their respective disclosure statements admitting their respective involvement alongwith their co-accused and got demarcated the place of occurrence. Accused Nirmal Singh @ Nimma got recovered Rs.1000/- and one motorcycle CT-100 without number plate, having Engine No.RFXPLE27608, Chasis No.M02837AX2LPE73993, colour blue, used in the commission of crime, in accordance with his disclosure statement. Petitioner/accused Gurmeet Singh got recovered Rs.810/- out of his share Rs.1500/-, robbed in the commission of crime, in accordance with this disclosure statement. Accused Yadwinder got recovered Rs. 740/- out of his share Rs.1500/-, robbed in the commission of crime, in accordance with his disclosure statement. Accused Yadwinder also got demarcated the place where he has thrown the mobile snatched from the salesmen at the time of commission of crime. Petitioner/accused and his co-accused also got demarcated the place from where they have broken the dandas from the neem (Bakain) trees, used in the commission of crime and the place where they have thrown the dandas after commission of crime. Copy of re-disclosure statement of petitioner/accused Gurmeet Singh is annexed herewith as Annexure R-2. A

6. That on 13.12.2023, accused Rajesh got recovered Rs.700/- out of his share Rs.1500/-, robbed in the commission of crime and accused Sandeep @ Rinku got recovered Rs.800/- out of his share Rs.1500/-, robbed in the commission of crime, in accordance with their respective disclosure statements. During investigation, accused Anmol, resident of Bhavdin was also found involved in the commission of crime. Earnest efforts were made to arrest accused Anmol, resident of Bhavdin but he is evading the arrest.

7. That after completion of investigation, the challan/final report under section 173 Cr.P.C. against accused (1) Rajesh, (2) Sandeep @ Rinku, (3) Nirmal Singh @ Nimma, (4) Yadwinder and (5) petitioner/accused Gurmeet Singh was submitted in the learned trial Court under sections 342/395/406/506/201/397 IPC and 25 Arms Act on 09.03.2024. Now the case is pending for 14.05.2024 for consideration of charge. The prosecution has cited total 11 prosecution witnesses in the case.



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8. That the petitioner/accused has moved an application for regular bail before the Ld. Court of Sessions Judge, Sirsa, which has been dismissed by the Ld. Court of Additional Sessions Judge, Sirsa, which has been dismissed by the Ld. Court of Additional Sessions Judge, Sirsa, vide order dated 16.04.2024/Annexure P-2.

9. That during investigation, petitioner/accused was found involved in the commission of crime. Petitioner/accused was duly identified by complainant and eye witnesses. During investigation petitioner/accused suffered disclosure statement and got recovered Rs.810/- robbed in the commission of crime and also got demarcated the place of occurrence as well as place from where he alongwith his co-accused have broken the dandas from the neem (Bakain) trees, used in the commission of crime and the place where he alongwith his co-accused have thrown the dandas after commission of crime. The petitioner/accused has conducted reki of the place of occurrence alongwith his co-accused Sandeep @ Rinku and Yadwinder. The involvement and active participation of petitioner/accused in the commission of crime has been fully established on the case file, as such he was sent upto face the trial alongwith his co-accused in the Court of competent jurisdiction by submission of challan/final report.

10. That now the petitioner has filed the present petition seeking the relief of concession of regular bail under section 439 Cr.P.C. As a matter of fact, the petitioner/accused has committed a serious crime. In the event of release of petitioner on bail, there is every apprehension that he would try to tamper with the prosecution evidence and to win over the prosecution witnesses and may abscond to avoid and delay the fair trial of the case. He does not deserve for the concession of bail. However petitioner/accused is not involved in any other case. Present petition being devoid of merits is liable to be dismissed."

6. Allegations against the petitioner are that he in connivance with co-accused have robbed a sum of Rs.23,600/- from the petrol pump of Mr. Kulwant Rai, where Naresh Kumar S/o Dharamveer and Naresh S/o Prabhu were on night duty on 23/24.10.2023.

7. As per paragraph 8 of the bail petition, the petitioner is in custody since 13.12.2023. Given the penal provisions invoked viz-a-viz pre-trial custody, 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 further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

8. In Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, Supreme Court holds,

[28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of



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the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

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 elaborate 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.

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 *Madhu Tanwar and Anr. 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.

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:

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- (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, to any 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 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 the 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	
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2.	Passport number, (If available), when the attesting officer/court thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

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. 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.

15. 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 of release from prison. 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



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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.”

16. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, 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 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 offence.

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 society. 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



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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.

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. *There would be no need for a certified copy of this order for furnishing bonds, and*



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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

15.05.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.