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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22150-2024
Decided on: 15.05.2024

Gurdas Singh alias Kaku

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:

HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:

Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Rahul Singh, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
12	09.01.2024	Civil Lines, Karnal	323, 324, 326, 308, 34 IPC (Sections 148 & 149 IPC deleted)

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 11 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 and states that they would have no objection to the conditions, i.e., surrender of weapons, if any. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State opposes bail.



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REASONING:

5. Prosecution's case is being taken from reply dated 15.05.2024, which reads as under:-

"1. That at the very outset the complainant Sonu son of Bali resident of Gali No.8, Ashok Nagar, Karnal submitted complaint to Incharge Police Post Sector-13, Karnal on 09-01-2024 alleging therein that on 08-01-2024 I was keeping my hands on fire near Hanuman Mandir, Sector-14. Nikku gave blow of lathi on my leg and thereafter I called my friend in my defence and then Nikku called some Nihang Sardar and they attacked on us with sword. They gave sword blow to my friend Sanjay and they gave sword blow which hit on my head and my foot and 6 stitches were applied to me. The sword hit on the hand of my friend Sanjay and his hand has been cut, stitched were also applied in his head. The name of the assailants are Nikku, Kaka, Kakku, Bagga who were 4-5 Nihang sardars and armed with swords in their hands and were having lathis. We saved our lives by running from there and thereafter called dial 112 and were admitted in hospital. Action may be taken against them." On the basis of above complaint FIR No. 12, dated 09-01-2024, U/s 148, 149 308, 323, 324 IPC was registered in Police Station Civil Lines, Karnal (annexure P-1). The complainant also enclosed MLR No. 184KNL/24, dated 08-10-2024 of complainant Sonu and MLR No. 185KNL/24 dated 08-01-2024 of injured Sanjay. The copy of MLRS are annexed as Annexure P-2 and p - 3 .

2. That after registration of the case, investigating officer reached at the place of occurrence and prepared rough site plan of the place of occurrence. On 25-01-2024 Investigating Officer obtained the case summary of injured Sanjay and X- ray report and film from Govt. Hospital, Karnal. Opinions regarding injuries sustained by complainant and injured were obtained from the doctor of Govt. Hospital, Karnal. The doctor gave opinion regarding the injury No. 2 on the person of injured Sanjay as grievous in nature as he suffered 4th metacarpal bone of right hand (Annexure p - 4 . The investigating officer added Section 326 of IPC in the investigation. Co accused Karan Singh @ Kuku and petitioner/ accused Gurdas Singh @ Kuku were arrested on 30-01-2024 and during interrogation they suffered their disclosure statement separately vide which they admitted the commission of crime of the present case. The petitioner/ accused got recovered sword use in the occurrence in pursuance of his disclosure statement (Annexure P-5) which was taken into police possession. Both the accused got demarcated the place of occurrence. During the investigation Bagga @ Mahinder and Kaka @ Gurmukh were



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found innocent and Section 1 angle R 149 of IPC were deleted and offence U/s 34 IPC was added in the investigation. During investigation opinion of the doctor regarding sword used in the occurrence has been obtained.

3. That after completion of the investigation report u/s 173 Cr.P.C. has been prepared on 29.02.2024 and the same was submitted before the Ld. Illaqua Magistrate on 31-03-2024. Now the case is fixed for 21-05-2024 for framing of charge against the petitioner/ accused and co-accused Karan Singh @ Kuku by the Id. Trial Court.

4. That the first bail application filed by the petitioner/ accused was dismissed by the Ld. Additional Session Judge, Karnal vide order dated 21-02-2024 in which the Ld. Trial Court has held that there are grave allegations against the petitioner/ accused conjointly with the co- accused. The injured Sanjay received three injuries on his person including incised wound on the left side of frontal region, incised wound of size 8 x 3 CM on the right hand ring figure with deep tissues exposed beside lacerated wound on the middle figure of right hand. Similarly complainant Sonu received three injuries including incised wound on the right parietal region of skull. In X- Ray report of injured Sanjay, fracture was found on the 4th metacarpal bone. In this manner the injuries inflicted by the assailants have let to invocation of grave offences U/s 326, 308 of IPC. Specific role in causing injuries to the complainant and injured Sanjay were attributed to petitioner/ accused and co-accused. The petitioner/ accused has come across as the principal culprit in the case to whom the injuries U/s 326, 308 of IPC are attributed and the sword used by the petitioner /accused for causing the said injuries has been recovered from his possession. The Ld. Additional Session Judge also held that there is a real apprehension that in case the petitioner/ accused is granted bail, he might hinder investigation, influence the prosecution witnesses and otherwise abscond from the process of law.

5. That the second bail application filed by the petitioner/ accused was dismissed by the Ld. Additional Session Judge, Karnal vide order dated 12-04-2024 that in which the Ld. Trial Court has held the "after application, the dismissal of first material earlier bail change in circumstances alleged by the applicant/ accused is that the investigation in the present case has Since concluded and challan has been presented before the Court. In this regard, learned Public Prosecutor has aptly submitted that after investigation, complicity of the applicant accused SIONEPK Claim parity with the co-accused. The other change has been found and challan has been presented against him for the grave offences under section 323, 324, 308, 326, 34 IPC, whereas trial in the present case is yet to be commenced and the material prosecution



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witnesses are yet to be examined. In such circumstances, the apprehension that the applicant/accused, if released on bail, might influence the prosecution witnesses and otherwise abscond from the process of law subsists. Secondly, the applicant/ accused has alleged that co-accused Karan Singh @ Nikku has since been granted regular bail by the Court and therefore, he is entitled to claim parity. In this regard, learned Public Prosecutor has aptly submitted that applicant/ accused is the principal culprit to whom the sword blows on the person of the complainant leading to the invocation of grave offences under section 308, 326 of IPC are attributed and the recovery of sword also purports to have been effected from the applicant/ accused. In such circumstances, the applicant/ accused circumstances which has been alleged is that the custody period of applicant/ accused has increased and the applicant/accused is continuing in custody from the date of his arrest i.e. 30-01- 2024 for a period of more than 3 months. Law is well settled that mere increase in the period of incarceration by itself is not a ground to enlarge the applicant/ accused on bail, if otherwise not found entitled. Thus, even the aforesaid circumstances cannot be regarded as a material change in circumstance since the dismissal of earlier bail application as to warrant the release of applicant/ accused on bail. In such circumstances, the substantial grounds on the basis of which the earlier bail application was dismissed viz the nature and gravity of allegations against the applicant/ accused and the possibility of applicant/ accused influencing the prosecution witnesses if released on bail, still subsist. Thus, there has been no material change in circumstances since the dismissal of earlier bail application as to entitle the applicant/ accused to release on bail".

6. That co-accused namely Karan Singh @ Nikku has been granted regular bail by the Ld. Trial court vide order dated 06-04-2024 as the role attributed to him is that he gave a blow with lathi on the leg of the complainant and then called the co- accused / petitioner who attacked the complainant and injured Sanjay with sword. The petitioner/ accused is principal culprit in the case to whom the injuries U/s 326, 308 IPC are attributed.

7. That the petitioner/ accused is in custody since 30-01-2024 and his custody certificate is enclosed herewith for the kind perusal of this Hon'ble Court. The petitioner/ accused is not involved in any other case as per the record of the police station.

In view of the submissions made above, status report by way of an affidavit of the deponent may kindly be considered and the petition filed by the petitioner may kindly be dismissed, in the interest of justice."



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6. As per paragraph 12 of the bail petition, the petitioner is in custody since 30.01.2024. Given the nature of allegations, and injuries inflicted by the petitioner, viz-a-viz pre-trial custody, coupled with 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. Furthermore, the petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course correct.

7. 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 *GudikantiNarasimhulu 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,



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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.

8. 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.

9. 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.

10. 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.

11. 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)	

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

13. 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 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.

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



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case, the petitioner shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of five-hundred meters from the victim's home 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 (Crl.) 458; and *Aparna Bhatt v. The State of Madhya Pradesh*, **2021:INSC:192**, 2021 SCC Online SC 230.

16. 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.

17. 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 witnesses, victim, and their families. 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."

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 the 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



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

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

15.05.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.