

CRM-M-22145-2024

244

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22145-2024

Decided on: 30.05.2024

Bhupinder Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. A.P.S. Deol, Sr. Advocate with
Mr. Satbir Rathore, Advocate for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

Mr. Yash Dev Kaushik, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
104	11.03.2024	Nissing, Disrtrict Karnal	148, 149, 308, 323, 506 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 13 of the bail petition, the accused declares that he has no criminal antecedents, however as per paragraph 6 of the reply dated 15.05.2024, one more case is pending against the petitioner and report under Section 173 CrPC has been submitted in that case.
3. Petitioner's counsel prays for bail by imposing any stringent conditions including surrender of firearms 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. Counsel for the petitioner further submits that the petitioner shall not enter in the property of the petitioner and not influence or intimidate the



CRM-M-22145-2024

witnesses in any manner and not repeat the offence in future. The petitioner contends that custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. In compliance to the previous order dated 23.05.2024, Mr. Deepak Saharan, IPS, Superintendent of Police, Karnal, is present in the Court along with his affidavit, which is taken on record. Further presence of the SP is dispensed with. State's counsel by making reference to the affidavit of the Superintendent of Police, opposes the bail.

REASONING:

5. Facts of the case are being taken from the reply dated 15.05.2024, which reads as under:-

"That at the very outset the complainant Ravinderson of Rajbir resident of Village Katlehri, Distt. Karnal got recorded his statement on 11-03-2024 in which he stated that "I and Devender are real brother, yesterday on 10.03.2024 at about 5.00-6.00 PM we both brothers were sitting in our field as usual in the area of Village Katlehri. We saw Bhupinder Singh, Harwinder Singh, Balwinder Singh sons of Ujjwal Singh and Prince son of Bhupinder Singh moving towards our field in a green JOHN DERECTOR. They have previously tried to take forcible possession of our land many times and have also lost the case twice in Distt. Courts, Karnal, We were just about to stop them from taking forcible possession of our land, then Harwinder gave a signal to his wife Sonia and three vehicles entered in our field in which about 10 - 12 unknown people came out with weapons like swords, knives, gandas, sticks etc. Harwinder, Bhupinder, Balwinder and Prince and 10-12 unknown people together attacked us. Harwinder, Balwinder, Prince etc. kept attacking us with deadly weapons, While attacking, Harwinder's voice was heard continuously saying that we should not escape today, We complained about his attack and threats many times earlier also. After this fatal attack, we remained lying half dead on the ground but Bhupinder Singh, Harwinder Singh, Balwinder Singh and Prince did not stop assaulting us, In fact, Prince had assaulted with an iron rod on our legs and arms, Harwinder Singh, Balwinder Bhupinder Singh and Prince along-with Singh, Other unknown persons gave beatings to us unless they assured that we are dead. Harwinder Singh was continuously saying that he had paid to kill us and beat us until job is done, Many people of the village raised noise then Harwinder asked them to leave then some good people of the village took us in unconscious condition to Kalpana Chawla Medical Hospital, Karnal, there we got first aid and seeing our serious condition, we were immediately referred to PGI, Chandigarh. Their aim was kill to us. You against are requested Harwinder to Singh, take strict action Bhupinder Singh, Balwinder Singh, Prince,, Sonia and others and Harwinder's both guns should be taken into police custody at the earliest. We and our family are always in dangerous from their weapons. I have received five fractures and major injuries on my body, Devender has 25



CRM-M-22145-2024

stitches on his head and major injuries on his lips and eyes. I have fracture on my nose and hands too, my 3 teeth have also been broken". On the basis of above statement BLICK FIR 308, Singh No. 104, dated 11 - 3 - 2024 , U/s 148,149, 323, 506 IPC was registered in Police Station Nissing, Karnal (annexure P-1).

2. That the investigating officer obtained the MLR No. MY/115/Karnal/2024, 10-03-2024 dated complainant Ravinder, in which 4 injuries mentioned and all the injuries were advised X-Ray and opinion of surgeon and MLR No MY/114/Karnal/2024, dated 10-03-2024 of injured Devender, in which 8 injuries are mentioned and all the injuries were advised X-Ray and opinion of surgeon. Copies of MLRS of complainant and injured are enclosed as Annexure R-1 and R - 2 .

3. That after registration of the case, investigating officer reached at ha place of occurrence and prepared rough site plan of the place occurrence on 12 - 3 - 2024 . Investigating officer recorded the statement of injured Devinder U./s 161 Cr.P.C. on 18 - 3 - 202 . On 27 - 3 - 202 Investigating Officer went to PGI, Chandigarh to obtain case summary and X – Ray report of complainant and injured but it was informed that the case summary of the injured Devinder will be given after 20 days as injured Devinder has been discharged after about 3 - 4 days and complainant Ravinder remained admitted in PGI, Chandigarh about 20-22 days. The investigating officer PSI Niranjan attended NDPS Judgment course Police Training Centre at Daroh, Himachal Pradesh from 29-03-2024 to 06-04-2024 and also attended the amendment in Indian Evidence Act course at Madhuban, Distt. Karnal from 27-04-2024 to 04-05- 2024, so he could not obtained case summary of complainant and injured from PGI, Chandiagr. After receipt of the case summary, the opinion of concerned doctor regarding the injuries sustained by complainant and injured will be obtained.

4. That the Anticipatory bail application of the petitioner/ accused has been dismissed by the Ld. Additional Session Judge, Karnal vide order dated 20-03-2024 in which the Ld. Trial Court has held that "It is admitted case of the parties that the incident took place in the evening of 10-03-2024 in Village Katlaheri. The complainant party Ravinder and Devender had sustained multiple and severe injuries and they are still admitted in the hospital. Both injured sustained injuries on their head and other parts of the body. There are specific allegations that petitioner/ accused along-with co-accused and some 10-12 unknown persons armed with deadly weapons in order to take forcible possession of their fields assaulted them until they fell on the ground in half dead condition and therefore, all these allegations are very serious. The material produced by both sides insufficient to find out that whether complainant party was aggressor. The investigation is at initial stage and investigating agency could not record the statement of injured due to their admission in the hospital. Further, I found sufficient force in the submission of learned Public prosecutor that releasing the petitioner/accused at this stage could facilitate the petitioner to repeat the similar offence or extend the threat to the complainant party or his family members or evade the trial. Further, a case of custodial interrogation is also made out as to find the truth as well as recovery of deadly weapons and whereabouts of 10 - 12 unknown persons, who were allegedly accompanying the petitioner/ accused at the time of incident in question".



CRM-M-22145-2024

5. That in compliance of the order dated 03-05-2024 passed by this Hon'ble court, the deponent went to the place of occurrence on 11-05-2024 where the complainant Ravinder, Vishal son of Davinder and respectable persons of the village Katlaheri gathered at the spot. The deponent enquired from the persons present at the spot who verified the facts as stated by the complainant Ravinder and injured Davinder. They also stated that there is a dispute between both the parties regarding their ancestral land. The complainant Ravinder and Davinder have sold the land of their share and the cultivating are brother Tejinder who is land of serving in their police department at Chandigarh. After pursuing the file of the case and inspection of the place of occurrence the deponent instructed PSI Niranjan Kumar to investigate the case on the points that opinion of the concerned doctor be obtained regarding the injury sustained by the complainant party, opinion regarding injury sustained by the accused party be also obtained, opinion be obtained how the accused party suffered injuries and the injuries were inflicted by which weapon. The call detail and location of the named accused be obtained and deep investigation be conducted in the case. In compliance of the above directions, PSI Niranjan obtained the opinion of the concerned doctor and also taken into possession of CDR and location of the accused party.

6. That the petitioner is also involved in case FIR No. 167, dated 28-04-2022, U/s 174-A IPC, of P.s.Nissing as he was declared proclaimed offender in complaint U / s 138 of N.I. Act by the Ld. court. The report U / s 173 Cr.P.C. has been submitted before the Ld. Court and now the case is fixed for prosecution evidence."

6. Considering the nature of allegations and in view of the assurance given by the petitioner that he shall not repeat the offence, surrender his firearms, not enter in the property of the complainant and also the fact that he will not threaten or intimidate the complainant party, petitioner makes out a case for bail and there would be no justifiability for custodial or pre-trial incarceration at this stage.

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



CRM-M-22145-2024

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, 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. 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.

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,



CRM-M-22145-2024

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:

(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 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/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

CRM-M-22145-2024

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 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 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



CRM-M-22145-2024

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.

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. 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.

15. 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.

16. 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



CRM-M-22145-2024

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.

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 complainant 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 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."

19. All terms of this bail order shall be explained to the applicant in a language they can comprehend by the applicant's advocate and the officer in whose presence the applicant signs personal bonds.

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.



CRM-M-22145-2024

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 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

30.05.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.