

CRM-M-24833-2024

REASONING:

5. I have heard counsel for the parties and gone through the pleadings and its analysis would lead to the following outcome.

6. The incident pertains to the year 2020 and in addition to that other proceedings are also pending between the parties as mentioned in paraNos.5 &6 of the bail petition. A reference is also made to the allegations made in para 12 of the petition.

7. On 13.05.2024, this Court had passed the following order in CRM-M-23851-2024, which reads as under:-

“Petitioner’s counsel submits that taking advantage that petitioner is a citizen of Switzerland, the complainant wants to pressurize him by lodging false and frivolous cases against him, as mentioned in FIR (Annexure P-5). He has read over the contents of the FIR.

Based on this, this Court is satisfied that this petition is worth issuing notice, however confined to the State only.

Notice served upon the official respondent(s) through the State’s counsel.

State seeks time to file reply.

Let the concerned DySP file response before the next date.

At this stage, counsel for the petitioner makes further prayer that no coercive steps be taken against the petitioner during the pendency of this petition.

However, the State opposes this prayer and submits that if this order is passed, it shall be impossible to take the investigation any further.

Upon further, petitioner’s counsel submits that at least liberty be given to the petitioner to file a petition for anticipatory bail straightway in this Court and he shall not claim any prejudice for not availing one statutory remedy of concurrent jurisdiction of this Court, which is also accompanied with supervisory jurisdiction under Article 227 of the Constitution of India.

List on 29.07.2024.

It is clarified that in case the petitioner files such petition(s) before this Court, he shall not claim any prejudice that if he had filed petition(s) before the Sessions Court, then he had statutory right of concurrent jurisdiction before this Court, which he missed. It is further clarified that in case of the petitioner’s filing such anticipatory bail petition straightway before this Court, Registry shall not to raise any objection for the reasons mentioned above.”

CRM-M-24833-2024

8. Facts of the case are being taken from the FIR, which read as follows:-

“To, The Superintendent of Police, Fatehabad. Application for taking legal action against 1. Narender Singh son of Ajit Singh 2. Satpal son of Ajit Singh, resident of Dhani Talliwali, District Fatehabad and 3. Angrej son of Gulzar Singh resident of Dhani Masitawali, Tehsil and District Fatehabad. Sir, The applicant respectfully submits as under: 1. That the applicant is a permanent resident of Dhani Khanpur and Chetanpur and the applicant's farm is situated in Dhani Talliwali.

2. That the above three accused keep weapons with them and whenever the applicants go to their fields, the above three accused threaten that they would get our coming stopped to the fields.

3. That six days ago, when the applicant Balkaran Singh son of Jangir Singh went to the field at night to take care of his crop, then said three accused were present in Dhani Talliwali and they were under the influence of alcohol. On seeing the applicant Balkaran, all the three accused uttered obscene abuses and fired in the air from the weapons they were holding.

4. That the above three accused had earlier also abused the applicants when they were present in the field, fired in the air and threatened to kill them. The video of the firing is attached with the application. Therefore, by presenting the application, it is requested that strictest legal action should be taken against the above three accused persons.

Date: 23.04.2024 Sd/-Balkaran Singh, Nachhattar Singh, Applicants Balkaran Singh son of Jagir Singh resident of Dhani Khanpur and 2. Nachhattar Singh son of Amrik Singh resident of Dhani Chetanpur, Tehsil and District Fatehabad, 98125-96898.

Police Proceedings:-

Today, I, HC was present at police post then an application number 379-P/SPL Dated 23.04.24 has been received from Balkaran son of Jangir Singh resident of Dhani Khanpur and Nakshatra Singh son of Amrik Singh resident of Dhani Chetanpur by post at police post Guru Nanakpura. That from the contents of application on finding an offence made out under sections 285, 506, 34 IPC and 25/27 4/59 A. Act, a written description is sent to police station through

CRM-M-24833-2024

EHC Roshan Lal 717 for registration of case. be After registering the case file number informed. Due to odd hours, the further investigation in the case will be conducted by contacting the complainant side. Today at Police Post Gurunanakpura. Sd/ HC Azad Singh 816 Police Post Gurunanakpura, Police Station City Fatehabad, Dated 25.04.24 at 10.00 pm. TODAY AT POLICE STATION: At present on receiving the aforesaid the aforesaid description the case was registered under aforesaid sections. The copies of FIR were prepared through Computer. The copy of case file alongwith original description is being sent to the spot to same I/O through the same EHC. The copies of FIR will be sent to Illaqa Magistrate and senior officers by post. The SHO was informed about the case."

9. On prima facie analysis of the nature of allegations, injuries inflicted by the petitioner, and other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration at this stage. Furthermore, the petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course correct.

10. 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.

CRM-M-24833-2024

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.

11. 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.

12. 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.

13. 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

CRM-M-24833-2024

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.

14. 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 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.

CRM-M-24833-2024

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

15. The petitioner is directed to join the investigation within ten days on or before 10.06.2024 and also as and when called by the Investigator. 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.

16. 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.

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

CRM-M-24833-2024

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.

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

CRM-M-24833-2024
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. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, without any delay. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

26. *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

22.05.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.