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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27103-2024

Reserved on: 10.07.2024

Pronounced on: 12.07.2024

Gurmej Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ranjodh Singh Sidhu, Advocate
For the petitioners.

Mr. Sukhdev Singh, AAG, Punjab.

Mr. Rishab Bhandari, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
58	04.05.2023	Sadar Tarn Taran, District Tarn Taran	306 & 120-B IPC

1. The petitioners, incarcerated upon their arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. As per Note II of the petition, petitioners No.1 & 3 have no criminal history, however one case is pending against petitioner No.2-Satnam Singh, details of which are mentioned in custody certificate dated 09.07.2024, which is as under:-

Sr. No.	FIR No.	Dated	Police Station	Sections
1	131	24.10.2009	Sadar Tarn Taran	336/506/34 IPC and 25/27 of Arms Act

3. Petitioners' counsels pray for bail by imposing any stringent conditions. The petitioners contend that the pre-trial incarceration would cause an irreversible injustice to the petitioners and families.

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4. While opposing bail, the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

5. In *Maulana Mohd Amir Rashadi v. State of U.P.*, (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. Facts of the case are being taken from reply dated 09.07.2024, which reads as follows:-

*"...the brief facts pertaining to the present case are that the petitioner Sukhdev Singh got recorded his statement before the investigating officer to the effect that he is a farmer by occupation and they are two brothers and one sister and the eldest is Kulwinder Kaur and she is married, he is younger to her and his brother Baldev Singh is the youngest aged 40 who is unmarried. The land of Supinder Kaur wife of Dhyan Singh and Rajwinder Singh son of Kuldeep Singh, residents of Rurre Assal and their land are located together and there has been a dispute over the said land since long time for water canal and they had been stopping them from digging the water canal. On 03/05/2023, at about 3:00 pm, the petitioner **Supinder Kaur**, Rajwinder Singh along with **Gurmej Singh son of Santokh Singh**, **Satnam Singh son of Harbans Singh**, Kirat Singh, Jitender Singh S/o Balwinder Singh. (Binda), Manjeet Singh son of Channan Singh came in a drunk condition on their land and destroyed their existing water canal and forcefully dug a new water canal in their land and they have harassed them a lot and his brother Baldev Singh said to him that they have*

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*harassed them a lot and have troubled and tortured them a lot and if he face any physical or financial damage then all of the persons mentioned above will be held responsible for this and on 04/05/2023, his Brother Baldev Singh left their home at 6 am in the morning in a tensed state and came back home at 8 am and fell on his bed in a sick condition due to which they rushed him to the nearby hospital by arranging a vehicle but he died on way itself before reaching the hospital. Due to the persons mentioned above, his brother ate poison and committed suicide and the aforesaid persons are all responsible for the death of his brother and in this regard, the present case FIR No.58 dated 04.05.2023, under section 306/120-B of IPC has been registered at PS Sadar Tarn Taran against the present petitioner namely **Supinder Kaur**, **Rajwinder Singh**, **Gurmej Singh**, **Satnam Singh**, **Kirat Singh**, **Jatinder Singh** and **Manjit Singh**."*

8. As per the custody certificates, the petitioners are in custody from last 2 months and 21 days. Given the nature of allegations against the petitioners, role attributed 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. Thus, the previous criminal history of the petitioner No.2 is not being considered strictly at this stage as a factor for denying bail.

9. In *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme

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Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, **2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

10. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice can be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal v. State (NCT of Delhi)*, **2020:INSC:106 [Para 92]**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

11. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make cases 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. This order shall come into force from the time it is uploaded on the official webpage of this Court.

12. 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

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alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

13. Given above, provided the petitioners are not required in any other case, the petitioners shall be released on bail in the FIR captioned above in the following terms:

(a). Petitioners to furnish a personal bond of Rs. Ten thousand (INR 10,000/-) each, AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), each 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 be satisfied that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). Petitioners are to hand over to the concerned court a fixed deposit of Rs. Ten thousand only (INR 10,000/-), each 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 favor 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, it shall be permissible for the petitioners to prepare an account payee demand draft favoring the 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 petitioners are 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.

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(e). While furnishing personal bond, the petitioners shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport numbers (If available) when the attesting officer/court considers appropriate or considers the accused a flight risk.	
3.	Mobile numbers (If available)	
4.	E-Mail ids (If available)	

14. The petitioners shall not influence, browbeat, pressurize, or 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.

15. Given the background of allegations against the petitioners, 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 petitioners 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 petitioners 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.

16. Till the completion of the trial, the petitioners 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'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.

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17. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners 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.

18. During the trial's pendency, if the petitioners repeat or commit any offense where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible for 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 cautioned not to indulge in criminal activities earlier. 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.

19. The conditions mentioned above imposed by this court are to endeavor that the accused does not repeat the offense and to ensure the safety of the witnesses, victim's family. 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."

20. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioners understand.

21. If the petitioners find the bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioners find 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 petitioners 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,

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and such Court shall also be competent to modify or delete any condition.

22. 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.

23. 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 a 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 petitioners notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

24. 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.

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

26. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners 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 of.

(ANOOP CHITKARA)
JUDGE

12.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.