

CRM-M-31910-2024
Reserved on: 18.07.2024
Pronounced on: 25.07.2024

Kana Ram alias Kanha Ram and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rhythm Bajaj, Advocate
for the petitioners.

Mr. Gurpartap S. Bhullar, AAG, Punjab.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
4	09.01.2022	City-I, Abohar, District Fazilka	365, 342, 355, 379, 323, 147, 149 IPC (offence under Section 377 IPC added later on)

1. The petitioners apprehending arrest in the FIR captioned above, have come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 18 of the bail petition, the accused declares that they have no criminal antecedents.
3. Petitioners' counsel prays for bail by imposing any stringent conditions. He further argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioners and family.
4. State's counsel opposes the bail.

REASONING:

5. Facts of the case are being taken from the reply dated 12.07.2024, which reads as under:-

"Initially, the FIR in question was registered u/s 365,342,355, 379,323,147,149 IPC against five accused namely (1) Kana Ram @ Kahna Ram son of Raja Ram (2) Narinder Kumar son of Subash Chander (present petitioners) (3) Pardeep Sharma @Pardeep Kumar Sharma son of Surinder

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Pandit @ Surinder Kumar Sharma (4) Charanjeet Singh alias Charna son of Kalu Ram and (5) Manish Kumar alias Madan Lal son of Subhash Chander on the statement of Pawan Kumar son of Narsi Ram on the allegations that accused kidnapped the complainant Pawan Kumar, beaten him and also insulted him and the accused also snatched the mobile phone and Rs.3800/- from the complainant. It was stated by the complainant that his marriage was solemnized with Rajni Sharma d/o Narinder Sharma about twelve years back. Due to strained relations between the complainant and the said Rajni Sharma, the accused Pardeep Sharma used to quarrel with the complainant. On 17.12.2021, the complainant went to Abohar in connection with some work and after doing work, the complainant sat in the Bus which was to go to Barekan and the Bus was to start at 4.00PM. Before starting of the Bus, the accused persons came there and beaten the complainant and took him in the Pik UP forcibly to Dharam Nagri, Abohar. The accused snatched Mobile phone and purse containing Rs.3800/- from the complainant. The accused persons illegally confined the complainant. The accused persons removed the clothes of the complainant making him naked. The accused persons also put danda in the anus of the complainant.”

6. Petitioners’ counsel seeks bail on the ground of false implication and delay in registration of FIR. The incident pertains to 17.12.2021 and the period around 2 ½ years has already elapsed and from the date of registration of FIR, initially, there were only allegations of assault and no allegation of carnal assault was mentioned, which is an improvement. Petitioners next ground is that although as per the complainant he was abducted on 17.12.2021 and was released on 03.01.2022, but there is no report qua his missing or abduction during these 16 days. If there was any truth in the allegation, atleast a missing report should have been filed. Even after release on 03.01.2022, complainant did not level any allegation of carnal assault but it was improved on 05.01.2022 i.e. after two days after due deliberations. Petitioners last ground is that an enquiry was conducted by DySP who found allegations to be incorrect and refers to General Diary report (Annexure P-4).

7. Counsel for the State opposes the bail but does not dispute the inquiry conducted, in which, one person was found innocent. Counsel further refers to paras 3(ii)(iii)(iv)(v) & (vi) and 4 of the reply dated 12.07.2024, in which role of the petitioners are mentioned, , which reads as under:-

“(ii) As per MLR No.IJ/03/2022/FZK dated 04.01.2022 (Civil Hospital, Fazilka) of the complainant-injured Pawan Kumar, there is one injury on his person.

(iii). The Forensic DNA report dated 24.06.2022 was received from the Forensic Science Laboratory, Mohalli.

(iv). During the investigation, the offences u/s 365,342,355,379, 147,149 IPC were not found to have been committed by the accused and further,

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the accused Manish Kumar was found innocent. So, vide DDR No.50 dated 29.01.2022 the offences u/s 365,342,355,379,147,149 IPC were deleted in the FIR in question.

(v). The complainant Pawan Kumar moved an application (No.423- PC-D2 dated 18.04.2023) to the S.S.P., Fazilka requested for conducting investigation into the matter. The said application was marked to the S.P.(Inv), Fazilka for investigation. During the investigation, the offences u/s 365,342,355, 377,323,147,149 IPC were found to have been committed by all the accused including the petitioners. The investigation report No.64-PC-Reader-SP(Inv.) 12.07.2023 submitted by the S.P.(Inv.), Fazilka was approved by the S.S.P., Fazilka. Vide DDR No.49. dated 17.07.2023, the offences u/s 365,342,355,377,323,147,149 IPC were added in the FIR in question.

(v). The accused disposed of the stick and vehicle used in the commission of crime, so the offence u/s 201 IPC was added in the FIR in question.

(vi). Now the FIR in question is for offences u/s 365,342,355, 377,323,147,149,201 IPC.

4 Role of the petitioners

The petitioners kidnapped the complainant, beaten him and also did carnal intercourse with the complainant against order of nature. The petitioners actively participated in the commission of crime.”

8. An analysis of the above said argument would lead to the following outcome. The allegations of the complainant that he was abducted on 17.12.2021 and was released on 03.01.2022, lacks corroboration from any missing person report. He was allegedly released on 03.01.2022 and he filed police complaint about abduction but did not level allegations about piercing sticks in his inner part. Subsequently the inquiry was conducted and report (Annexure P-2) was sent by Senior Superintendent of Police, Fazilka, to Deputy Commissioner, as per which, offence was only found to be committed under Section 323/341/34 IPC and Sections 365/342/355/379/147/149 IPC were deleted. Entry qua this inquiry was duly made into General Diary details (Annexure P-3). One of the co-accused Pardeep Sharma had approached this Court for anticipatory bail by filing CRM-M-54565-2023, and the said person was granted anticipatory bail by Coordinate Bench of this Court vide order dated 19.12.2023 and petitioners are entitled for bail on parity with Pardeep Sharma @ Pardeep Kumar Sharma also.

9. On prima facie analysis of the nature of allegations, role attributed to petitioners, and other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration at this stage. Furthermore, the petitioners are first offenders, 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

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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 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

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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 petitioners make 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 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 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 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 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). Petitioners to hand over to the concerned investigator/court a fixed deposit for 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 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 petitioners 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 petitioners 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 petitioners 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)	

15. The petitioners are directed to join the investigation within seven days and also as and when called by the Investigator. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioners 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

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be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioners 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 petitioners 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. 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 today 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.

18. 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 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.

19. 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 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

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Bhatt v. The State of Madhya Pradesh, **2021:INSC:192**, 2021 SCC Online SC 230.

20. 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.

21. 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."

22. 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.

23. If the petitioners find 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, and such Court shall also be competent to modify or delete any condition.

24. 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.

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

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26. 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.

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

28. 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.

29. *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.

(ANOOP CHITKARA)
JUDGE

25.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.