

CRM-M-32276-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32276-2024
Reserved on: 18.07.2024
Pronounced on: 26.07.2024

Amrik Singh and another ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amaninder Singh Sekhon, Advocate
For the petitioners.

Mr. Gurpartap S. Bhullar, Asst. AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
78	27.04.2024	City Kotkapura, District Faridkot	324, 323, 506, 148, 149 IPC (307 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 14 of the bail petition, the accused declares that he has no criminal antecedents.
3. Facts of the case are being taken from reply dated 17.07.2024, which reads as under:-

“2. That the brief facts of the case are that on 27.04.2024, an intimation of medico legal case regarding injured Barjinder Singh s/o Tejinder Singh r/o Kotkapura was received who was under treatment at DMC Hospital, Ludhiana. The police visited the injured victim at DMC Hospital but the victim was not in a condition to make statement. However at Kotkapura, an eyewitness Manjit Singh s/o Pohla Singh r/o Muktsar Road, Kotkapura had got recorded his statement and disclosed that his cousin sister Baljit Kaur w/o Beant Singh and her mother in law Bimla Devi was allotted 04 kanals of land bearing khasra no. 476/6 being a member of Scheduled Caste land owing society. On 25-4-2024, he along with injured Barjinder Singh were harvesting the crop from land. At 09-30 PM, Jagtar Singh armed with gandasa, Surjit Singh armed with Kirpan, Sukhdev Singh was holding a daang, Amrik Singh alongwith unknown persons came and TAR raised lalkara to catch them and to teach lesson for harvesting crop. They

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caused injuries to Barjinder Singh and when he raised alarm, they left the place by extending threats. The intentions of the accused was to take forcible possession of land of his sister. Initially the victim was brought to Civil Hospital, Kotkapura and then to GGS Medical College, Faridkot but condition of injured was critical and referred to DMS Ludhiana. Acting upon the information, initially offence u/s 324/323/506/148/149 IPC was registered against present petitioners among Surjit Singh, Sukhdev Singh and unknown accused.

3 That the injured victim Barjinder Singh was under treatment at DMC, Ludhiana. In furtherance with the application of 1.0 to the concerned Surgeon, in final medical opinion dated 18-5-2024, As per the Neurosurgery opinion, the injury no. 1,2,3 was SDH, measuring 4 MM right parietal area sub galeal Hematoma measuring 8MM in maximum thickness right parietal region and injury No.4 was communitated fracture left parietal bone. The injuries No.1 to 4 of Barjinder Singh was declared dangerous to life and injury No.5 was declared simple in nature. Consequent thereto enhancement of offence u/s 307 IPC has been made vide DDR No.46 dated 25.05.2024."

4. Petitioners' counsel submits that petitioner-Amrik Singh is shown to be empty handed and not attributed with any injury and no recovery is to be effected from him. Regarding petitioner No.2-Jagtar Singh, counsel submits that he has been attributed Gandassa blow on the little finger of the left hand, which falls U/s 324 of IPC and is a minor injury and has been declared as simple in nature and second injury (two injuries) attributed to the petitioner-Jagtar Singh is Gandassa blow on the right side of head and the perusal of para No.3 of the affidavit of D.S.P. filed before this Hon'ble Court clarify that injury no.04 is serious in nature and that injury is not attributed to the petitioner Jagtar Singh, rather it is attributed to Surjit Singh (non-petitioner), who is already in custody. Petitioner's counsel further submits that the complainant party alleges that land in dispute belongs to Schedule Caste Co. Op. Land Owning Society and 04 Kanal land has been allotted in the name of Bimla Devi out of Khasra no.476 and the complainant party wanted to cultivate that land. It is pertinent to mention here that the land in dispute has been allotted to Sukhdev Singh-non petitioner/co accused and Sukhdev Singh alongwith Scheduled Caste Co. Op. Land Owning Society through its President Jassu Singh, had filed a Civil Suit (Annexure P-4) in which this Bimla Devi is defendant no.6 and the defendants were restrained to interfere into the plaitniffs possession illegally and forcefully vide judgment and decree dated 07.08.2024 and thereafter contempt application has also been filed against this Bimla Devi vide Annexure P-5 for not obeying the order (Annexure P-4) in which, order has been passed in favour of Sukhdev Singh co accused/non petitioner and civil imprisonment for 15 days has been awarded to Bimla Devi etc. It is also submitted that Sukhdev Singh non petitioner/co accused have filed an application to S.H.O. against Manjeet Singh

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(complainant of the present case) for forcibly, illegally taking away mustard crop on 11.04.2024 (P-6) and also an application (Annexure P-7) has been filed against the complainant party of the present case. Petitioner's counsel further 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 Petitioner and family.

5. The State's counsel by making reference to para 5 & 6 of the reply dated 17.07.2024, opposes the bail, which reads as under:-

"5. That the statement of injured victim Barjinder Singh has been recorded in verbatim who endorsed the FIR and established the culpability of present petitioners. The injured confirmed that the present petitioner No.2 was armed with Gandasa. Both the petitioners in joint with co-accused Sukhdev Singh and Surjit Singh had formed a unlawful assembly who were armed with lethal weapons and assaulted him. Petitioner-Jagtar Singh had given three blows of his gandasa upon the victim, out of which two were hit at his right side of head and at left hand.

6. That the investigation is at initial stage. Allegations are serious in nature. There is specific attribution to the present petitioners who had caused fatal injuries to the victim. The weapon of crime is yet to be recovered. In case the petitioner is admitted on anticipatory bail, it would deprive the prosecution to develop its case."

6. An analysis of evidence qua the petitioner Amrik Singh leads to the outcome that Amrik Singh was unarmed and even he did not cause injuries using kirch or fist blows, thus there would be no justifiability for custodial or pre-trial incarceration at this stage of petitioner-Amrik Singh.

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

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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.

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 and for the reasons mentioned above, the petitioner Amrik Singh 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

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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 Amrik Singh shall be released on bail in the FIR captioned above in the following terms:

(a). Petitioner to furnish a 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 if the concerned Judicial Magistrate is unavailable, go to any other 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). The petitioner will hand over to the concerned investigator a fixed deposit of 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 amount described above 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 unwilling to make a Fixed Deposit in such an eventuality, it shall be permissible for the petitioner 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 petitioner must 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 it appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

12. The petitioner is directed to join the investigation within seven days 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, the prosecution will be open to seeking 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, 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

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evidence.

14. 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 petitioner Amrik Singh shall surrender all weapons, firearms, and 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 offense.

15. Till the completion of the trial, the petitioner Amrik Singh 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, Amrik Singh, shall not enter the victim's property, workplace, and residence until the statements of all non-official and informal witnesses in the trial are recorded. 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.

17. The bail bonds of the petitioner, Amrik Singh, 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

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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. The petitioner's Amrik Singh's advocate and the officer in whose presence the applicant signs personal bonds shall explain all terms of this bail order to the applicant in a language they can comprehend.

20. If the petitioner, Amrik Singh, 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 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 offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order qua the petitioner Amrik Singh 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. By analyzing the evidence regarding petitioner No.2-Jagtar Singh, it would be appropriate to refer to the reply as per which petitioner-Jagtar Singh was attributed three blows of gandas upon the victim, out of two gandas blows hit at right side of head and at left hand of victim, which is corroborated by the medical evidence. The injuries inflicted by the victim were so severe that he had to be referred to big medical Center because of his critical condition and it was the medical intervention that helped in recovery. It is not a case where the petitioner had inflicted one blow but three, which

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prime facie indicates intention of petitioner No.2-Jagtar Singh to cause serious injuries with intention to cause as much as possible loss and to cause massive physical pain. Thus, petitioner No.2-Jagtar Singh is not entitled to bail.

24. 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.

25. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

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 qua petitioner No.1 allowed in terms described above and qua petitioner No.2 petition is dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

26.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.