

CRM-M-32237-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32237-2024
Reserved on: 18.07.2024
Pronounced on: 29.07.2024

Manjit Singh alias Manjeet Singh alias Mithun ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. Gurpartap S. Bhullar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
232	26.11.2021	Division No.6, Jalandhar, Distt. Jalandhar	302, 307, 120-B, 148 & 149 IPC and 25 of Arms Act

1. The petitioner, who is apprehending arrest on the allegations of committing murder of one Lucky gill @ Aniket Gill, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 9 of the bail petition, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	100	2019	29 of NDPS Act	Bhogpur

3. Petitioner's counsel prays for bail by imposing any stringent conditions and states that they would have no objection to the condition of surrendering of weapons. Petitioner’s counsel 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.

4. Vide order dated 09.07.2024, this Court had asked the State to file response, but had not granted any interim relief to the petitioner.

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

“Statement of Kavi Kumar @ Pawan son of Baldev Raj, resident of house No.979, Arjan Nagar Police Station, Navi Baradari, Jalandhar aged 38 years Mobile No.8284937386. Stated that I am residing at the aforesaid

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address. I have been driving auto-rickshaw for the last 8-9 years at Gate No.3 Bus Stand, Jalandhar along with Ashish Kumar son of Vijay Kumar resident of Village Alipur, near village Midhupur, Jalandhar, has also been driving auto rickshaw. On 25.11.2021 at about 9PM night. I Lucky Gill @ Aniket my maternal uncles son and Ashish Kumar were sitting in the auto rickshaw of Ashish Kumar, near SSP Office, Laddo Wali Road, Jalandhar. After some time we came out of the said auto rickshaw. I went away to take my auto rickshaw which was parked at the Ravi Dass Balmiki Swami Auto Worker Union. In the meantime, Arman Travel Company owner Rinku, Billa along with their 10-15 associates to whom I can recognize if brought before me, came toward the auto rickshaw of Ashish Kumar, they were equipped with fire arms and other deadly weapons. All of a sudden, they started beating my maternal uncle's son Lucky Gill and Ashish Kumar. I tried to intervene to rescue them. Those persons gave blow on the right side of my head with some weapons. Sandeep Singh @ Rinku son of Duli Chand, resident of Gopal Pur near Beas Village, Dihati Jalandhar, gave datar blow on the head of my maternal uncle's son with intention to kill him. Their associates also gave beating to me and Ashish Kumar. Thereafter out of fear, we run towards our auto rickshaw. After some time, I and Ashish Kumar went away in search of our companion Lucky Gill. Thereupon, we heard gun shot. Out of the aforesaid person, one person shot gun fire at the left side of stomach of Lucky Gill and he felt down near the khokha at Arman Travels. I and Ashish Kumar raised hue and cry "Mar ditte Mar Ditta." Thereupon all the aforesaid persons ran away with their respective weapons. I and Ashish Kumar took injured Lucky Gill to Civil Hospital Jalandhar for treatment. The doctor on duty examine Lucky Gill and declared "brought dead". The medical officer also gave medical treatment to me and Ashish Kumar. The moto of this happening was that Sandeep Singh owner of Arman Travel Company along with his associate have been doing "Gunda Gurdī" near the bus stand. They gave beating to me as well as Ashish Kumar and killed Lucky Gill with their weapons. The dead body of Lucky Gill was deposited at the mortuary of Civil Hospital, Jalandhar. I came to you and recorded my statement in the present of Kulwant Rai, father of Lucky Gill. I have read my statements which is true and correct action be taken against the aforesaid person in accordance with law and justive be done in the case."

6. Petitioner's counsel argued that petitioner is claiming parity with co accused namely Sukhjot Singh @ Kaka and Amanpreet @ Aman, Jograj who have been granted the concession of anticipatory bail by the learned Addl Session Judge (Who are named in the supplementary statement of complainant) vide order Annexure P-4. He further submits that name of the petitioner has not been mentioned in the FIR and not even in supplementary statement. In the supplementary statement the name of 5 accused namely Sukhjot Singh son of Kuldeep Singh, Gurmit Singh, Aman son of Jagtar Singh, Simar Raj and Jagraj Singh son of Amarjit Singh have been mentioned and out of 5, three accused namely Sukhjot Singh, Amanpreet and Jograj Singh have been granted the

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concession of Anticipatory bail vide order Annexure P-4.

7. Counsel for the State opposes the bail on the grounds that petitioner is a hard core criminal with massive criminal history and warrants of arrest have been issued by the Illaqa Magistrate, for 03.08.2024. State has also referred to role of the petitioner as mentioned in the reply, which reads as under:-

“Role of petitioner

There are specific allegations against the petitioner that he was actively involved in the beatings of the deceased Lucky Gill @ Aniket Gill and also caused injuries to complainant Kavi Kumar as well as Ashish Kumar eye witness of the occurrence.”

8. An analysis of the above said arguments would lead to the following outcome.

9. As per the initial allegations, Sandeep Singh along with co-accused hatched conspiracy to kill Lucky Gill and had also caused injuries to complainant Kavi Kumar and Ashish Kumar-eye witness. Based on the investigation, challan was filed against two persons namely Sandeep Singh and Dilpreet Singh. A supplementary challan was filed against Amanpreet Singh @ Aman, Sarbjit Singh @ Kaka, Manmeet Singh @ Money @ Flora and Amrinder Pal. The petitioner was nominated in the FIR on the basis of disclosure statement of accused Dilpreet Singh vide General Diary No.031 dated 11.12.2021, which is annexed as R-1/T, with the reply dated 17.07.2024, which reads as under:-

“At this time it is entered that during the investigation of of case FIR No 232 dated 26/11/2021 under section 302,307,120-B.148,149 IPC 25/54/59 Arms Act PS Division No 6 Jalandhar the accused Dilpreet Singh @ Babbu @ Billa son of Amrajit Singh resident of Dakoha near Snatan Dharam Mandir Dakoha Rama Mandi Jalandhar during interrogation disclosed that on 25/11/2021 the owner of Arman Tour and Travel Company Sandeep Singh @ Rinku has birthday. On this birthday I, Sandeep Singh @ Rainku, Gurmit Singh @ Budhu, Money Phillaura, Money Lahoria, Raja @ Giri Raj resident of Hajara, Mithun resident of Pathankot and two unknown whom he did not know, and three other who come with Money Phillura join there. I did not know their name came together. We all drink whisky on the eve of birthday. During this Money Phillaura has altercation with some person in auto rickshaw between gate No 3 and 4 of bus stand. Due to this we all reached there with our weapons, I also came there with the Datar taken from the office of Arman Travel. We all hurt them. So during my interrogation and enquiry it has transpired that with other accused Money Phillaura son of Surinder Singh @ Billu resident of Luhan PS Sadar Jalandhar, Money Lahoria son of Joginder Singh resident of Luhan PS Sadar Jalandhar and Mithun

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resident of Pathankot have inflicted injuries with weapons on complainant of this case and his companions. Due to this I, SI nominate the above said Money Phillaura son of Surinder Singh @ Billu resident of Luharan PS Sadar Jalandhar, Money Lahoria son of Joginder Singh resident of Luharan PS Sadar Jalandhar and Mithun resident of Pathankot in the present case and continue Special report are being sent to Illaqa Magistrate and senior officer. Diary is entered."

10. Since the complainant could not recognize the person, as such he named all the person who were sitting with him. Later on challan under Section 173(8) CrPC was also filed and summary of the challan points out that they also tried to check CCTV footage but shops were closed and they could not find out evidence about the participation of the accused persons from CCTV footage. On 29.11.2021 they also recorded supplementary statement of Kulwant Rai father of deceased Aniket Gill . It would be relevant to extract the said statement, which reads as follows:-

"I am resident of above mentioned address, On dated 26.11.2021 on my statement FIR No 232 dt 26.11,2021 was lodged U/s 302,307,120-B,148,149 IPC and 25/54/59 arms Act at PS Division no 6 Commissionate jalandhar at the time of registration of FIR I was perplexed while recording my statement and I have named only Sandeep Singh alias Rinku son of Duni Chand r/o Village Gopalpur near Beas village Jalandhar Rural and Billa and written about 10/15 unknown person, now I, Kulwant Rai and other person have seen the footage which was found at the time of occurrence which was seen by us and from many shopkeepers and persons we came to know that on that day Sukhjit Singh alias Kaka son of Kuldeep Singh r/o house no 62 Defence colony Jalandhar, mobile no 74000 00905, Gurmit Singh alias Bubbu r/o Village Luhara Jalandhar, Aman son of Jagtar Singh who is nephew of Sandeep Singh alias Rinku r/o Gopalpur near beas Jalandghar Simar Raj r/o Hazara Jalandhar and Jagraj Singh alias Jasgga son of Amarjit Singh r/o Village Fauldiwal Jalandhar and Lala r/o village Fauldiwal were involved in the fight. besides that the persons who were involved in the crime would be indentified soon and I would inform you. The above named accused be nominated as accused in the FIR, the vehicle which was involved in the crime bearing no PB 08 0331 was identified as Santro car, the above said accused be arrested soon and justice may be given to us, I have given my statement in front of Kulwant Rai son of Mohan Lal"

10.A Even in this statement Sukhjit Singh, Gurmit Singh alias Bubbu, Aman, Simar Raj, Jagraj Singh alias Jasgga and Lala were named but petitioner was not mentioned. Sukhjit Singh @ Kaka, Amanpreet @ Aman and Jograj Singh @ Joga, have already been granted bail by the Additional Sessions Judge, Jalandhar.

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

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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.

12. 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.

13. On prima facie analysis of the nature of allegations and other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration at this stage. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail.

14. 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

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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.

15. 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.

16. 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.

17. 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

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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.

18. 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 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 the 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

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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)	

19. 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, 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.

20. 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.

21. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order or in earlier

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orders. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

22. 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.

23. 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.

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

25. 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

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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.

26. 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.”

27. 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.

28. 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.

29. 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.

30. *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

29.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.