

CRM-M No.33608 of 2024(O&M)
Decided on: 22.07.2024

...Petitioner

Versus

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Geeta Rani, Advocate for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0229	13.04.2024	Samalkha, District Panipat	148, 149, 195-A, 285, 506, (Section 120-B IPC added later on) and Section 25 of the Arms Act, 1959

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking regular bail.

2. In paragraph 19 of the bail application, the accused declares that he has no criminal antecedents.

3. Petitioner's counsel prays for bail by imposing any stringent conditions including surrender of firearms, if any. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family. He further submits that co-accused has already been granted bail by this Court.

4. Counsel for the State has handed over custody certificate dated 19.07.2024 and opposes the bail by submitting that custody is very less i.e 01 months & 19 days. However, as per custody certificate the petitioner has following criminal antecedents:

Sr. No.	FIR No.	Offences	Police Station
1.	246/2022 dated NA	Under Sections 279, 337, 338, 427, 304-A, IPC	Samalkha, Panipat
2.	929/2022 dated 3.11.2022	Under Sections 307, 201, 34 IPC	Samalkha, Panipat
3.	113/2013 dated 24.03.2013	Under Sections 148, 149, 323, 452, 506, 120-B, IPC	Samalkha, Panipat

REASONING:

5. Facts of the case are being taken from the order dated 05.07.2024 passed by the Additional Sessions Judge, Panipat:-

“Brief facts of the case relevant for the purpose of disposal of this application are that complainant Parveen son of Puran has moved a complaint to SHO, Police Station, Samalkha, stating therein that he is resident of village Chulkana and he is an agriculturist. On 26.07.2018, Rishi son of Shyam Lal, resident of Chulkana in collusion with their companions has committed the murder of Sompal, who is son of his Tau/uncle Ruhala Ram, resident of Chulkana, in which, police after taking legal action, arrested Rishi and his companions and that matter is being adjudicated before the court and in that case Rishi and his companions are still confined in Jail. On 12.04.2024, Rishi had been released on bail and came to village in the evening. Rishi came in convoy of 20-25 vehicles having 70-80 persons, in which, Rishi son of Shyam Lal, Sandeep son of Shyam Lal, Sonu son of Pritam, Vishal @ Dhuma son of Ashok and other persons were involved, which can be identified after seeing them, came in convoy and started to burn firecrackers in street and also made two fires and they also made lot of noise The person who had fired, they do not know his name. After seeing such type of terror, he and his family members did not come out from the house. If they would get out from the house, then, they could have to kill to him or his family members. He and any member of his family member did not sustain any injury. Rishi has extended the threatening that if he will depose the statement against him, then, he will kill him. He and his family members are having the apprehension of life from Rishi and his companion and thus, prayed that legal action may kindly be taken against the accused persons. On this complaint, formal FIR No. 229 dated 13.04.2024 under Sections 148, 149, 195A, 285, 506 IPC and 25 Arms Act was got lodged with Police Station, Samalkha. The investigation was carried out by SI Manoj Kumar, Police Station, Samalkha. During investigation, statements of witnesses were got recorded. Site plan of the place of occurrence was got prepared. On 13.04.2024, accused Hardeep @Dastan son of Mahender Singh, Vishal @ Dhuma son of Ashok, Nitin son of Ashok, Sandeep son of Shyam Lal, Gobind son of Hawa Singh, Gopal Dipanshu son of Hawa Singh, Gaurav @ Golu son of Shishpal, Azad son of Rishipal, Sanju son of Satpal, Satpal son of Mangluram, Parveen son of Fateh Singh, Hawa Singh son of Manglu, residents of village Chulkana, Police Station, Samalkha, District Panipat were got arrested. Then, offence under Section 120-B IPC was got added. The accused persons have suffered their disclosure statements. In pursuance of their disclosure statement, memo of demarcation was got prepared. Thereafter, the investigation was carried out by HC Pushpender. On 18.4.2014, accused Naresh son of Puran son of Dale Ram, resident of Chulkana, Police Station

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Samalkha, District Panipat at present tenant of Dharambir Jaurasi, Gandhi Colony, Samalkha, District Panipat was joined in the investigation and he was got arrested in the present case. He has suffered his disclosure statement. On 23.04.2024, accused Rohtash @ Sonu @ Mota son of Roshan Lal, resident of village Nohra, District Panipat has been arrested in the present case. He was interrogated. He has suffered his disclosure statement. In pursuance of his disclosure statement, memo of demarcation has been got conducted. The vehicle make Endeavour bearing registration no. HR-51BN-0004 was got recovered from the possession of the applicant-accused, which was taken by the police in their possession vide recovery memo. During investigation, on 1.5.2024, accused Vipin son of Tejpal, Ravinder @ Ganja son of Ramphal Saini, Ravi @ Sullar were found involved in the occurrence and they have been arrested in the present case. Later on, the investigation was handed over to ASI Subhash Kumar, CIA-3, Panipat. Co-accused Pardeep @ Rishi was joined in the investigation but has not co-operated in the investigation. In this regard, a rapar has also been got lodged against him.

During the investigation, on 31.5.2024, accused Samunder @ Matti son of Krishan and Lal Chand @ Dhola son of Ganpat, residents of village Chulkana have been got arrested. They were interrogated. They suffered their disclosure statements in which they have disclosed about the commission of the offence.”

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

7. 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.

8. 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.

9. As per custody certificate, the petitioner is in custody since 28.05.2024. Given the nature of allegations, 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 is not being considered strictly at this stage as a factor for denying bail.

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

12. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail, subject to the following terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

13. In **Madhu Tanwar and Anr. v. State of Punjab**, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the

accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

14. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/);

AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any

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 court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the ‘Chief Judicial Magistrate’ of the concerned district, or blocking the aforesaid amount in favour of the concerned ‘Chief Judicial Magistrate’. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for 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 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)	

15. 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.

16. 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 release from prison 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.

17. 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.

18. 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 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.

19. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force 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.

20. 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."

21. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

22. If the petitioner 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.

23. 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.

24. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes

maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

25. 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.

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

27. 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.

28. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

22.07.2024
Sonia Puri

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