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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.43920 of 2024
Reserved on: 18.10.2024
Pronounced on: 29.10.2024

Harwinder Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Mirpur, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
59	28.03.2024	Sadar Ludhiana, District Ludhiana	399, 402, 379-B and 411 IPC

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 9 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

"i) That on 27.03.2024, ASI Prit Pal Singh (hereinafter referred to as "the complainant"), along with a police party, was present near Bedi Farm House, Basant Avenue, Ludhiana. At about 10:00 PM, the complainant received information from a secret informer that individuals namely Ashwani, Mohit, Amandeep Kumar @ Aman, Rahul @ Bhuchi, Amandeep Singh, Paramjeet Singh @ Pamma @ Samar, and Harvinder Kaur(the petitioner) who were allegedly involved in snatching and theft. It was further informed that the aforementioned individuals were currently present at an empty plot with small boundary walls in Basant Avenue Colony, wielding deadly weapons and planning to commit dacoity in the houses of nearby residential area. Acting upon this information, a "Ruqa" was sent to Police Station Sadar, Ludhiana, and based on the same, the present



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case, i.e., FIR No. 59 dated 28.03.2024, was registered under Sections 399 and 402 of the IPC, wherein the individuals, including 1. Ashwani, 2. Mohit, 3. Amandeep Kumar @ Aman, 4. Rahul @ Bhuchi, 5. Amandeep Singh, 6. Paramjeet Singh @ Pamma @ Samar, and 7. Harvinder Kaur (the petitioner), were arrayed as accused.”

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

“Harvinder Kaur (the present petitioner) was apprehended by Lady Constable Kavita, and during her search, a sharp knife was found in her right hand, and a plastic bag containing 7 mobile phones was recovered.

Role of the Petitioner:

The petitioner, Harwinder Kaur, alongwith the other co- accused and on 27.03.2024 were wielding deadly weapons were preparing to carry out a dacoity in the residences around the Basant Avenue area of Ludhiana. Upon conducting a raid, the petitioner along with other co-accused persons, was apprehended while attempting to flee, and a sharp knife and a plastic bag containing seven mobile phones were found in her conscious possession.

Evidence Against the Petitioner:

Upon her arrest, seven mobile phones and a Sharp Knife were recovered from the petitioner's possession and the petitioner was found to be actively involved with the other accused in their nefarious plan to carry out a dacoity in the residences around the Basant Avenue area of Ludhiana on 27.03.2024.”

7. Pre-trial incarceration should not be a replica of post-conviction sentencing. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, per paragraph 5 of the bail petition, the petitioner has been in custody since 28.03.2024. Per the custody certificate dated 17.10.2024, the petitioner's total custody in this FIR is 06 months 16 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

8. 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

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for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

10. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

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

11. This order is subject to the petitioner's complying with the following terms.

12. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

13. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and residence of the victim 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.

14. Given the background of allegations against the petitioner, it becomes paramount to protect the victim, and 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



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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, and 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 offense.

15. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense. 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."

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

17. A certified copy of this order would not be needed 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. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

18. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.10.2024

Sonia Puri

Whether speaking/reasoned:

Yes

Whether reportable:

No.