

CRM-M-49528-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49528-2024
Reserved on: 11.11.2024
Pronounced on: 29.11.2024

Manphul alias Manphul Ram ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Jashandeep Sidhu, Advocate and
Mr. Parveen Jain, Advocate
for the petitioner(s).

Mr. Jasjit Singh, DAG, Punjab.

Mr. Simranjot Singh Nagra, Advocate
for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0080	06.06.2024	Sardulgarh, Distt. Mansa	458, 380, 323, 148, 149 IPC (Section 427 IPC added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 16 of the bail petition, the accused declares that he has no criminal antecedents.
3. Vide order dated 03.10.2024, petitioner’s arrest was stayed by this Court.
4. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

*“Role of the petitioner(s) & Evidence against the petitioner(s).
(ii) on 06.06.2024, police party headed by 10/ASI Hardev Singh had again visited at SDH Sardulgarh and after obtaining the fitness opinion in respect of injured/complainant Om Parkash, his statement was recorded by the IO. In the statement complainant had stated that, "I am a resident of the above said address and I am an agriculturist. My son*

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Rakesh Kumar, who has been serving in the army. I along with my wife Sumitra Devi and daughter Sunita who has been married to Mukesh Kumar R/o Mallkhera, Rajasthan, who had come to see us, was present at out farm (Dhani). It would be about 11:30 PM. That dispute is going on between Morari Lal and Rajinder Kumar with regard to passage, near our land, Rajinder Kumar S/o Purna Ram, Heera Lal S/o Purna Ram and Ajay Kumar (Petitioner No.2) S/o Rajinder Kumar, Vikram (Petitioner No.1) S/o Booti Raim, Atma Ram S/o Heera Lal R/o Khaira-Khurd along with Sadhu Ram @ Kamal (Petitioner No.3) S/o Mahinder Ram @Mahinder Singh, Sudhir S/o Chotu Ram R/o Karandi along with 30/10 unknown persons came lift the bricks from their field. My wife told me that Rajinder Kumar etc have been breaking the solar Panel of our motor installed in the field. When I after opening the window told them as to why they are causing loss to me, then Sadhu Ram @ Kamal (Petitioner No.3) S/o Mahinder Ram @ Mahinder Singh and Rajinder Kumar S/o Purna Ram entered my house and one of them caused a blow with something upon which my wife and daughter asked them as to what they are doing, then they pushed my daughter and wife. Sadhu Ram @ Kamal (Petitioner No.3) S/o Mahinder Ram @Mahinder Singh lifted my cycle from our house, All the above said persons have caused damage to our solar panels of solar light. When we saw it in the morning it revealed that starter of the solar panel was also not working. Rajinder Kumar etc. have caused me injury in connivance with each other and have caused loss to us. Legal action may be taken against them. Reason of enmity is that Rajinder Kumar etc. used to ask us to help them. We will send the record to you regarding this fight. Then my nephew, Rakesh Kumar got me admitted in the government hospital, Sardulgarh, where I am getting treatment. I have recorded got my statement to you, heard, read, it is correct. Manphul @ Manphul Ram S/o Dhanpat Ram also said you help us otherwise I will see you. That is why this incident has happened."

5. 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.

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

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

"That it would be pertinent to mention here that during the pendency of the investigation proceedings Krishna wife of accused Rajinder Kumar

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has moved an application regarding cancellation of present case/FIR. On receipt of the application, enquiry on the said application was conducted by the then DSP Sardulgarh. After concluding the enquiry proceedings, enquiry officer has made the recommendations for declaring the accused persons namely Atma Ram and petitioner Manphul @ Manphul Ram as innocent and as fight between Om Parkash and Rajinder Kumar was found to be taken place on the passage in front of house of Om Parkash and Rajinder Kumar was not found entering inside the house of complainant Om Parkash, as such, hence offence under section 458, 380 IPC were not made out, in the present case/FIR.

(i) In the meantime, another application was moved by the complainant Om Parkash before the office of ADGP Bathinda Range Bathinda for transferring the enquiry proceedings from District Mansa to some other District. On which, enquiry of the above mentioned application moved by the complainant and enquiry of the application already pending with DSP Sardulgarh, were entrusted to SP (Investigation) Mansa by ADGP Bathinda Range Bathinda.

(ii) After concluding the enquiry proceedings, enquiry officer i.e. SP (Investigation) Mansa has ascertained that at the time of occurrence accused Atma Ram was present on his duty at village Bhadra, Hanumangarh, Rajasthan, as such, he was not present at the spot of occurrence, hence he was found innocent by the enquiry officer. However, rest of the accused persons had participated in the occurrence and constituted the offence under section 458, 380, 323, 427, 148, 149 IPC. Consenting with the enquiry report submitted by the enquiry officer i.e. S.P. (Investigation) Mansa, SSP Mansa has approved the above mentioned enquiry report and vide DDR No.53 Dated 06.09.2024 above named Atma Ram was declared as innocent in the present case/FIR.”

8. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

9. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage.

10. Without commenting on the case's merits, in the facts and circumstances peculiar

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to this case, and for the reasons mentioned above, the petitioner makes a case for bail.

11. 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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

12. 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)	

13. This order is subject to the petitioner’s complying with the following terms. 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.

14. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. 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. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner 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 (CrI.) 458); and *Aparna Bhatt v. The State of Madhya Pradesh*, 2021:INSC:192, 2021 SCC Online SC 230.

16. 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

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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, 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.

17. 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."

18. 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 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.

19. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

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

21. 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

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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.

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

(ANOOP CHITKARA)
JUDGE

29.11.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.