

(2023) 01 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 106 Of 2023

Manni Singh And Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 362, 437A, 438, 438(2), 446
Evidence Act, 1872 — Section 27

Citation : (2023) 01 P&H CK 0025

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : J.S. Moudgill, Harsimar Singh Sitta

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Police Station

15

14.01.2020

City Sunam, District Sangrur

307, 427, 506, 148, 149 IPC (201, 336 IPC added later on) and 25 of Arms Act.

1. The petitioners apprehending arrest in the FIR captioned above, on the allegations of accompanying one Kapil Sharma alias Mani Pandit, have come up before this Court by filing second application under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 12 of the bail petition, the accused declares that "No such or similar FIR is registered/pending against the petitioners."

3. Counsel for the petitioners submitted that initially, the petitioners had filed a similar application for anticipatory bail on behalf of both the accused. Vide order dated 09.09.2022 passed in CRM-M-40984-2022, this Court had dismissed the bail application. After that, the petitioners had filed CRM-43305-2022 in CRM-M-40984-2022 seeking recalling of the order on the grounds that they were entitled to bail on parity with co-accused, who had already been granted bail prior to the dismissal of the petition. Vide order dated 18.11.2022, this Court had passed the order and the same reads as follows:

"The present application has been filed seeking recalling of the order dated 09.09.2022. A perusal of the application reveals that petitioner seeking recalling on parity. However, given the instructions imposed under Section 362 Cr.P.C, this application is not maintainable as such stands dismissed.

However, liberty reserved to the applicant-petitioner to file fresh application for bail under Section 438 CR.P.C on the ground of parity and in such application, the petitioner shall specifically annexed all the orders through which he seeks parity.

It is clarified that dismissal of the petition shall not come in the way in case second bail application is filed.

It is further clarified that if the petitioner file fresh application for anticipatory bail, the observation made in the order dated 09.09.2022 shall not be taken into consideration while deciding the same".

4. While opposing the bail, State counsel does not dispute the fact that while rejecting the bail on 09.09.2022, this Court had considered the fact that the accused had fired gun shots whereas persons who had been granted bail had not fired the gun shots. State also does not dispute the fact that the person, who had fired gunshot was also called by the name Mani whereas name of the petitioner is Manni Singh, thus there was a confusion regarding the name of petitioner Manni Singh with Mani @Kapil Sharma, who had fired the gun shots.

5. As revealed through Annexure P-6, the said Kapil Sharma @ Mani Pandit had filed his bail application and the same was withdrawn vide order dated 14.01.2021 passed in CRM-M-27444-2020.

6. Given above, there is no dispute that while deciding the bail application of Manni Singh, it was not pointed out to the Court that Manni, who had fired gun shots was Kapil Sharma @ Mani Pandit and not the petitioner Manni Singh and his associate Baljeet Singh.

7. Vide order dated 28.02.2022 passed in CRM-M-47082-2021, this Court had granted bail to one of the similarly situated accused namely Sandeep Sharma, who had even a criminal history. It has not been argued by the State that the

said order was assailed or reversed by the Supreme Court. While granting bail in Sandeep Sharma although one of the factors was that the parties had entered into an out of Court

Panchayati compromise and there were cross-cases and both were settled as per the said compromise. It would be relevant to refer to para 6 of the aforesaid order which reads as follows:

The parties have entered into an out of court panchayati compromise per which there were cross-cases and both cases have been settled. Whether such compromise contains sufficient averments for quashing of FIRs is not an issue at this stage. This Court is concerned only with the effect of compromise viz-a-viz bail. Although the accused has a criminal history, he was not allegedly carrying the pistol, which is small enough that it could have been concealed by Kapil Sharma, who had fired shots. Given the accused's age and other factor peculiar to this case, it may be appropriate to afford the petitioner a final opportunity to course correct....."

8. The allegations against the petitioners are also similar to that against Sandeep Sharma although, the shots were fired in the air but those were fired by Mani (Kapil Sharma @ Mani Pandit) not by the petitioners. Furthermore, there were cross cases and once the complainant has compromised the matter with one of the accused it shall be a travesty of justice to deny the bail to the present petitioner, who did not fire upon the complainant party and was identically placed. Simply because the complainant did not compromise the matter with him should not be a ground to deny bail to him. Apart from that the case pertains to 14.01.2020 i.e. three years have passed and the custodial investigation and sending them behind bars at this stage would not be justifiable at all.

REASONING:

9. On prima facie analysis of the nature of allegations, injuries inflicted by the petitioners, and other factors peculiar to this case, there would be no justifiability for custodial or pre-trial incarceration at this stage. Furthermore, the petitioners are a first offender, and one of the relevant factors would be to provide an opportunity to course-correct. Even a prima facie perusal of paragraph 4 of the bail petition needs consideration for 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 requires, 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 petitioners who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioners 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) 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*, (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.

12. Given above and without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners 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 *Mahidul Sheikh v. State of Haryana*, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, [Law Finder Doc Id # 1933969], this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either

furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

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

(a). Petitioners 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 accepting the surety, the concerned officer must satisfy that if the accused fail to appear in court, then such surety can produce such accused before the court.

OR

(b) Petitioners to hand over to the concerned investigator/SHO 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 favour of the 'Chief Judicial Magistrate' of the concerned district. The fixed deposit may be made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioners's account.

(c). In case of the launching of the prosecution, the said fixed deposit be forwarded to the concerned court along with the police report/challan under 173 CrPC.

(d). Such court shall have a lien over the deposit 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.

(e). It shall be the discretion of the petitioners to choose between surety bonds and fixed deposits. It shall also be open for the petitioners to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(f). On the reverse page of personal bond, the petitioners shall mention her/his permanent address along with the phone number, preferably that numbers which is linked with the AADHAR, and e-mail (if any). In case of any change in the above particulars, the petitioners shall immediately and not later than 30 days from such modification intimate about the change to the concerned police station and the concerned court.

(g). The petitioners 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 also of this bail order.

15. The petitioners is directed to join the investigation within five days and also as and when called by the Investigator. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioners 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 petitioners 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.

16. The petitioners 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.

17. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners 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 petitioners shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

18. Till the completion of the trial, the petitioners 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.

19. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioners 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 (CrI.) 458; and *Aparna Bhatt v. State of Madhya Pradesh*, 2021 SCC Online SC 230.

20. During the trial's pendency, if the petitioners repeat 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.

21. 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*, 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."

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

23. If the petitioners find bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioners find 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 petitioners 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.

24. 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.

25. 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 petitioners notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

26. 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.

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

28. 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.

29. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners 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.