

(2023) 02 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 7032 Of 2022 (O&M)

Sukhchain Singh

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 174A, 437A, 438(2), 439, 446

Citation : (2023) 02 P&H CK 0119

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : APS Deol, Vishal R. Lamba, Virat Rana

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No

Dated

Police Station

Sections

180

10.7.2021

Division no.6, Commissionerate of Police, Ludhiana, District Ludhiana.

376, 354, 354A, 506, 120-B IPC & 376-2(N)/ 201 IPC (added by way of supplementary challan)

1. The petitioner incarcerated in the FIR captioned above, on the allegations of sexually exploiting the complainant, has come up before this Court under Section 439 CrPC seeking bail.

2. As per paragraph 12 of the bail petition, the petitioner is in custody since 4.7.2022 and he has no criminal antecedents except FIR no.105 dated 21.4.2022 under Section 174-A IPC P.S. Division No.6, Ludhiana.

3. Petitioner's counsel argued that four out of total seven co-accused, including the main accused Simarjit Singh Bains, have been admitted on bail.

4. While opposing the bail, the State contends that given the criminal past, the accused is likely to indulge in crimes, after he is released on bail. State counsel has referred to the statement of the victim, wherein she had mentioned that the petitioner made phone calls and sent obscene and objectionable messages to her and also issued threats to her. Thus, the petitioner is not entitled to bail because of his conduct.

5. This Court had granted bail the main accused Simarjit Singh Bains after careful prima facie assessment of victim's statement. The allegations against the present petitioner stand on much lesser footing in comparison to Simarjit Singh Bains, to whom this Court had granted bail. Petitioner's counsel has no objection to imposition of any stringent conditions upon the petitioner in case of grant of bail to him.

6. The allegations against the petitioner are that he in connivance with other accused got a favourable deal qua the victim's property and subsequently, pressurized her to make physical relationship with him. Although the police has collected sufficient evidence regarding exchange of phone calls between the petitioner and victim but since there was also a deal of property, as such, such calls cannot be related only to exert upon the victim to have sexual intercourse. Even otherwise, if the petitioner was making phone calls to the victim of his own, then nothing stopped her to block such calls or not to attend the same. Any further discussion would prejudice the case of the prosecution, as such, this Court refrains from observing any further.

7. 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.

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 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.

9. 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.

10. Given above, provided the petitioner is not required in any other case, he 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, any nearest IILaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned 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. Said 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 petitioner's account.

- (c). 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.

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

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

- (f). The petitioner 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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."

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

17. 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.

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

19. 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.