

(2021) 11 P&amp;H CK 0011

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous Petition (M) No. 43918 Of 2021

Dinesh Kumar @ Dabbu

APPELLANT

Vs

State Of Haryana

RESPONDENT

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**Date of Decision:** Nov. 3, 2021**Acts Referred:**

- Indian Penal Code, 1860 - Section 147, 148, 149, 186, 239, 323, 325, 341, 342, 353, 364, 427, 506
- Code Of Criminal Procedure, 1973 - Section 437A, 446, 446A

**Hon'ble Judges:** Anoop Chitkara, J**Bench:** Single Bench**Advocate:** Abhayjeet Singh, Rajat Gautam**Final Decision:** Allowed

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**Judgement**

Anoop Chitkara, J

1. FIR No. Dated Police Station Sections 239 31.07.2020 Badshahpur, 147, 148, 149, 186, Gurugram 323, 325, 341, 342, 353, 364, 427 and 506 IPC

The petitioner, incarcerating upon his arrest for causing assault, has come up before this Court seeking regular bail.

2. Para 9 of the bail petition and status report mentions no criminal history.

3. Briefly, the allegations against the petitioner are that the petitioner chased the complainant, gave merciless beatings and kidnapped him. The beatings led to fracture and they also caused obstruction in public duties. Based on these allegations, the Police registered the FIR mentioned above.

4. Ld. Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

5. On the contrary, the contention on behalf of the State is that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

6. 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 elaborate 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.

#### REASONING:

7. An analysis of entire evidence does not justify further incarceration of the accused, nor is going to achieve any significant purpose. Without commenting on the case's merits, given the investigation stage, the period of incarceration already undergone, and the circumstances peculiar to this case, the petitioners make a case for release on bail.

8. Given the above reasoning, the Court is granting bail to the petitioners, subject to strict 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. The petitioners shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. Ten thousand (INR 10,000/-), and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Special Judge/Judicial Magistrate having the jurisdiction

over the Police Station conducting the investigation, and in case of non-availability, any Ilaka Magistrate. Before accepting the sureties, the concerned

Court must satisfy that in case the petitioners-accused fail to appear in Court, then such sureties are capable to produce the petitioners-accused before

the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

10. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

11. The petitioners to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to

delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an

appeal, on this very bond, the petitioners also promise to appear before the higher Court in terms of Section 437-A CrPC.

12. The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s),

WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall

immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers,

WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

13. 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 of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to

tamper with the evidence.

14. 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 may be 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 and shall be let off before 5 PM, and

shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. Given the gravity of accusations and the heinous nature of the offence, the petitioner shall surrender all weapons, firearms, ammunition, if any,

along with the arms license to the concerned authority within 30 days from today 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.

16. During the trial's pendency, if the petitioner 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 continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

17. In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioners undertake to pay all the expenditure (only the principal amount without interest) that the Government(s) might incur to produce them before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioners' failure to reimburse shall entitle the trial Court to order the transfer of money from the petitioners' bank account(s). However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioners alone, and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and that voyage was not for any other purpose/function what so ever.

18. 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 vernacular and if not feasible, in Hindi.

19. In case the petitioners find the 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.

20. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

21. 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.

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

23. There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioners can download this order along with the case status from the official web page of this Court and attest it to be a true copy. The Prosecutor shall also verify the downloaded copy by

comparing it from the official web page. In case the attesting officer or the Court wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

24. In the facts and circumstances peculiar to this case, the petition is allowed in the terms mentioned above.