

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

114

CRM-M-2050-2018(O&M)

Date of Decision: March 06, 2018

Ifeanyai Chukwu Okeke

.....Petitioner(s)

versus

U.T. Chandigarh

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Gurbir Singh Sandhu, Advocate
for the petitioner.

Ms. Ashima Mor, A.P.P., U.T. Chandigarh.

Sudhir Mittal, J. (Oral)

The petitioner seeks modification of order dated 07.04.2017 (Annexure P1) and order dated 21.12.2017 (Annexure P2), whereby the petitioner was directed to furnish local surety.

2. The petitioner is an accused in FIR No.39, dated 28.01.2017. The recovery of 40 grams *heroin* was effected from him. Since the challan was not presented within the statutory period prescribed, the learned Judge, Special Court, Chandigarh vide order dated 07.04.2014, released the petitioner on bail subject to furnishing bonds in the amount of Rs.50,000/- with one local sound surety. Being a foreign national, the petitioner was not able to furnish local surety and moved an application under Section 440 Cr.P.C. with a prayer to waive the condition of local surety. The said application was rejected vide order dated 21.12.2017. Hence,

the present petition.

3. Learned counsel for the petitioner submits that being a foreign national, the petitioner is unable to furnish a local surety. He states that the passport of the petitioner already stands deposited in Court, thus, he is not likely to abscond. Reliance is placed on judgment dated 25.11.2011 passed in **CRM-52645-2011** tilted as ***Grant Alan Easton and another Vs. U.T. Chandigarh***

4. Learned counsel appearing on behalf of U.T. Chandigarh states that the word used in Section 445 Cr.P.C. is 'may' and not 'shall' and therefore, it is the discretion of the Court whether to accept or to waive condition of local surety or not.

5. I have heard learned counsel for the parties and with their able assistance have also perused the record. The petitioner was granted bail vide order dated 07.04.2017 but has not been released on account of his failure to comply with the condition of furnishing of local surety. Thus, it is clear that he has no local contacts who can stand surety for him. Section 445 Cr.P.C. empowers the Court to waive the condition of executing bond on depositing a sum of money or Government promissory note. A similar condition of local surety was waived by this Court in the case of ***Grant Alan Easton*** (supra).

6. Keeping in view the totality of the facts and circumstances of the present case and the fact that the petitioner has been unable to furnish local surety for almost one year, it would be just and expedient to waive the condition, more so because his passport is already in custody of the Court. Accordingly, the condition of local surety imposed in the order dated 07.04.2017 is set aside. The petitioner shall furnish bail personal bonds in the sum of Rs.50,000/- and shall deposit a sum of Rs.50,000/- with the learned trial Court as surety to appear in the Court on every

date of hearing during the pendency of the trial. He shall furnish an undertaking that he will not leave Chandigarh without prior permission of the Court and shall submit his local address to the Court enabling the police to ascertain his whereabouts frequently.

7. The amount deposited shall remain with the Court subject to the final decision of the Case.

8. Petition stands disposed of.

March 06, 2018
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No