

Crl. Misc. No. M-33825 of 2018 (O&M)

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-33825 of 2018 (O&M)

DATE OF DECISION:12.03.2019

Runa Pasricha Rajpoot

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Manish Soni, Advocate
for the petitioner.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

DAYA CHAUDHARY, J.

The present petition under Section 439 (1) (b) Cr.P.C. read with Section 482 Cr.P.C has been filed for setting aside the condition of depositing an amount of Rs. 5 lacs in cash imposed by learned Additional Sessions Judge, Gurugram vide order dated 14.05.2018 while granting regular bail to the petitioner during pendency of the trial in case FIR No.195 dated 05.03.2018 registered under Sections 180, 420, 467, 468, 471 IPC and 66 I.T. Act at Police Station DLF, Sector 29, Gurugram.

Learned counsel for the petitioner contends that the petitioner has been ordered to be released on bail subject to deposit of an amount of Rs. 5 lacs, whereas, it is very difficult for the petitioner to arrange and deposit the said amount. The petitioner is a woman and a divorcee

petition is also pending between her and her husband. Learned counsel further contends that condition of depositing the aforesaid amount is not only illegal and arbitrary but unreasonable also. The petitioner is having no criminal background and a serious prejudice will be caused to her as due to non-deposit of said amount, she cannot be released on bail. Learned counsel also contends that the petitioner also filed an application for modification of order dated 14.05.2018, which was dismissed vide order dated 31.05.2018. Learned counsel for the petitioner has also relied upon the judgments of Hon'ble Apex Court in the case of **Sandeep Jain Vs. National Capital Territory of Delhi rep. by Secretary, Home Department** 2000 (1) RCR (Criminal) 517, **Ramathal and others Vs. Inspector of Police and another** 2009 (12) SCC 721 and of Madras High Court in the case of **Amaldoss and others Vs. State, Rep. by the Inspector of Police, Patteeswaram Police Station, Thanjavur District** 2015 (13) RCR (Criminal) 809, in support of his contentions.

Learned counsel for the respondent-State has opposed the submissions made by learned counsel for the petitioner on the ground that a detailed order has been passed while granting bail to the petitioner subject to deposit of an amount of Rs. 5 lacs. The trial Court is having power to impose such condition by considering the facts and circumstances of the case as has been held in various judgments. Learned counsel also submits that it cannot be said that the said condition is arbitrary or illegal as there is a specific provision to impose such condition.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR as well as order dated 14.05.2018 passed by Additional Sessions Judge, Gurugram,

whereby, the petitioner was ordered to be released on bail subject to deposit of an amount of Rs.5 lacs by the petitioner.

Section 437 Cr.P.C. empowers the authority of law to impose any condition while granting bail to any person accused of, which reads as under:-

Section 437 in The Code Of Criminal Procedure, 1973

“437. When bail may be taken in case of non- bailable offence.

[\(1\)](#) When any person accused of, or suspected of, the commission of any non- bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

[\(i\)](#) Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

[\(ii\)](#) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that It is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.] [\(2\)](#) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his¹ guilt the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail] or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

[\(3\)](#) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub- section (1), the Court may impose any condition which the Court considers necessary-

(a) In order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) In order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) Otherwise in the interests of justice.

(4) An officer or a Court releasing any person on bail under sub- section (1) or sub- section (2), shall record in writing his or its ¹ reasons or special seasons] for so doing.

(5) Any Court which has released a person on bail under sub- section (1) or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non- bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the

execution by him of a bond without sureties for his appearance to hear judgment delivered.”section 2 of Section 438 envisages conditions which can be imposed while granting anticipatory bail, which reads as under:-

438(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub- section (3) of section 437, as if the bail were granted under that section.

Sections 440,441 and 445 of Cr.PC. are also relevant and they are reproduced as under:-

“440. Amount of bond and reduction thereof. (1) The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive. (2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

:441. Bond of accused and sureties. (1) Before any person is

released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be. (2) Where any condition, is imposed for the release of any person on bail, the bond shall also contain that condition. (3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge. (4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either, hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

“445. Deposit instead of recognizance. When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

A perusal of provisions of Section 437 (3) and 438 (2) Cr.P.C.

clearly show that conditions which can be imposed are primarily with a

view to ensure availability of the accused during investigation, enquiry or trial and his non-interference with the course of justice. Other conditions which Court may think appropriate can be imposed but idea is to ensure his presence as and when required and his non-interference with the investigation, inquiry or trial.

Section 440 of the Cr.P.C. denotes that the amount of every bond executed is to be fixed by considering the circumstances of the case but it should not be excessive. Similarly Section 441 of the Cr.P.C. provides that before releasing any person on bail or released on his own bond, a bond for such sum of money as the Court thinks sufficient is to be executed by such person. However, Section 441 of the Cr.P.C. does not speak about deposit of any cash security. Only in certain circumstances, where the accused is unable to secure sureties for his release, he is permitted to deposit a sum of money or Government promissory Note as the Court may fix in lieu of executing such bond, under Section 445 Cr.P.C.

In the present case, the issue for consideration is whether the Court below can insist for depositing the money as a condition for releasing the accused on bail?

This issue is no longer res integra as has been held in a number of judgments passed by Hon'ble the Apex Court as well as by this Court that imposing a condition of depositing money is excessively onerous and unreasonable and such condition may even amount to denial of bail itself.

Similar issue was there before Hon'ble the Apex Court in the case of **Sreenivasulu Reddy Vs. State of Tamil Nadu** (2002) 10 SCC 653, wherein, the Court granted anticipatory bail to accused with a condition to deposit an amount of Rs. 50,000/- along with other conditions. Aggrieved

by imposition of such condition, the accused preferred an appeal before Hon'ble the Apex Court. Hon'ble the Apex Court has held that while exercising jurisdiction under Section 438 (2) of the Cr.P.C., the Court ought only to impose such conditions/terms for enlarging an accused on bail as would ensure that the accused does not abscond. The relevant portion of the judgment as mentioned in para 6 of the said judgment is reproduced as under:-

“Having considered the rival submissions and the provisions of Section 438 Cr.P.C., we are of the considered opinion that the Court while exercising jurisdiction under Section 438 Cr.P.C., must bear in mind and be satisfied that the accused will not abscond or otherwise misuse liberty and this can be ascertained from several factors like conduct of the accused in the past, his assets in the country and so on. But, while granting such anticipatory bail, though the Court may impose such conditions as it thinks fit, but the object of putting conditions should be to avoid the possibility of the person hampering investigation. The discretion of the Court while putting conditions should be an exercise of judicial discretion.”

Similarly, Hon'ble the Apex Court in **Sandeep Jain's case (supra)**, wherein, a direction of the Metropolitan Magistrate to deposit Rs. 2 lacs apart from furnishing of a bond of Rs. 50,000/- with two sureties as a condition precedent for bail, was held to be unreasonable.

Similar issue was there before Hon'ble the Apex Court in the cases of **Shyam Singh Vs. State** (2006) 9 SCC 169, **Keshab Narayan Vs. State of Bihar** AIR 1985 SC 1666, **Hussainara Khatoon (I) Vs. Home**

Secretary, State of Bihar (1980) 2 SCC 81 and **Mahesh Chandra Vs. State of U.P.** (2006) 6 SCC 196.

In Sandeep Jain's case (supra), it was also held that the accused cannot be detained in custody for long period without conviction. It has also been observed that Court had not even come to the conclusion that allegations made in the FIR were true and correct. It is to be seen and decided on conclusion of the trial.

The question of a condition being onerous and unreasonable came for consideration before the Supreme Court in the case of **Sumit Mehta Versus State (NCT of Delhi)** (2013) 15 Supreme Court Cases 570 where considering the ratio laid down by the Constitution bench in the case of **Gurubaksh Singh Sibbia V State of Punjab** (1980) 2 SCC 565, **Amarjit Singh Vs. State (NCT of Delhi)** (2009) 13 SCC 769, **Sk. Ayub V State of M.P.** (2004) 13 SCC 457, **Glaskasden Grace V Inspector of Police** (2009) 12 SCC 769, **Ramathal V Inspector of Police** (2009) 12 SCC 721 and **Sandeep Jain V NCT of Delhi** (2000) 2 SCC 66 with regard to imposing condition under Sections 438(2) and 437 (3) has been held that any condition used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Paragraph 15 reads as follows:

“15. That words “any condition” used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order

of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.”

The Supreme Court, while concluding, held as –

“11. 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. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of Patna High Court Cr.Misc. No.1320 of 2016 (3) dt.01-04-2016 11 putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the court while imposing conditions must be exercised with utmost restraint.

13. We also clarify that while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the

courts are duty-bound to impose appropriate conditions as provided under subsection (2) of Section 438 of the Code.”

Hence, in view of the above ratio laid down by the Apex Court, it is not in dispute that the conditions for anticipatory bail cannot be onerous and unreasonable so as to defeat the purpose of grant of bail.

The word “onerous” is defined in The New Lexicon Webster's Encyclopedic Dictionary as “burdensome or “troublesome”.

Black's Law Dictionary defines the word “onerous” Patna High Court Crl. Misc. No. 1320 of 2016 (3) dt. 01.04.2016 12 as Excessively burdensome or troublesome; causing hardship, Having or involving obligations that outweigh the advantages.”

Hence, the word “onerous” is a relative term. A condition in the same set of fact or nature of accusation may be onerous for one but not for the other, it depends upon the status of the person, nature of accusation and financial and other capabilities of the accused. Similar is the case of “unreasonableness”.

In the present case, learned Additional Sessions Judge, Gurugram while granting regular bail to the petitioner has asked him to furnish bail/surety bonds to the satisfaction of the trial Court subject to deposit of an amount of Rs. 5 lacs. The petitioner is a woman, and is aggrieved by the condition to deposit an amount of Rs.5 lacs being financially weak and is not in a condition to deposit huge amount as there is also a matrimonial dispute with her husband and divorce petition is also pending. The condition to deposit such amount appears to be unreasonable and arbitrary. Moreover, there is no provision under the Cr.P.C. to deposit

the amount in cash as a condition precedent for grant of bail. However, the Court may permit the person to deposit money in lieu of executing bond and with one/two sureties in the like amount. Granting or declining the bail depends upon the facts and circumstances of each case, which is within the exclusive discretion of Court of law or authority. However, such direction is to be exercised by the Court by considering facts and circumstances of the case. Once the Court comes to the conclusion on facts and circumstances of the case that a person is entitled to be released on bail, then no such condition other than as provided in Section 437 (3) or 438 (2) Cr.P.C. can be imposed. Imposition of such unreasonable condition is not only beyond the purview of the provisions of the Cr.P.C. but also beyond the powers of the Court as has been held by Madras High Court in **Amaldoss's case (supra)**. It has further been held that such condition is beyond the powers of the Court and discretion does not mean that it has no arena or boundary. It has been stated to the extent that no Court having howsoever absolute power can traverse beyond the arena carved out for it. Even absolute discretion does not admit element of arbitrariness or whimsicality or capriciousness.

In view of the law position as discussed above, facts and circumstances of the case, I am of the considered view that condition to deposit an amount of Rs. 5 lacs in cash, imposed by learned Additional Sessions Judge, Gurugram vide order dated 14.05.2018 while granting bail to the petitioner is unreasonable and arbitrary and the same is liable to be set aside.

Accordingly, the present petition is partly allowed and condition to deposit an amount of Rs. 5 lacs in cash vide order dated

14.05.2018 passed by Additional Sessions Judge, Gurugram is set aside.

The petitioner is directed to be released on bail on executing a bond in the sum of Rs.25,000/- with two sureties in the like amount to the satisfaction of the trial Court/Duty Magistrate.

March 12, 2019
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes