

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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CRM-M-18053-2020.

Date of Decision: 09.07.2020.

Santosh alias Santu

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Deepender Singh, Advocate for petitioner.

Suvir Sehgal, J. (Oral)

The Court has been convened through Video Conferencing due to Covid-19 pandemic.

The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing/modifying the impugned order dated 17.03.2020 (Annexure P/1) whereby while granting regular bail to the petitioner in case FIR No.121 dated 09.02.2017 (Annexure P/2) registered under Section 379-B IPC at Police Station Sarai Khawaja, District Faridabad, learned Additional Sessions Judge imposed a condition to the effect that while furnishing bail bonds of Rs.50,000/- with two sureties, one surety will deposit Rs.50,000/- as cash surety.

Facts, in brief, are that above mentioned FIR was registered against unknown persons on the allegation that on 08.02.2017 they had forcibly snatched a mobile phone and a bag from the complainant. During investigation,

the petitioner was arrested. The petitioner was released on bail, but he

misused the concession and did not appear before the trial Court and vide order dated 18.03.2019, his bail was cancelled. On 19.08.2019 he was declared as a proclaimed offender and was arrested on 13.11.2019 and is in custody since then. The petitioner filed the first bail application which was dismissed by the trial Court vide order dated 29.01.2020. The second application for bail pending trial was allowed by the trial Court vide impugned order dated 17.03.2020 (Annexure P/1) wherein the following condition was imposed:-

“Hence, without commenting anything upon the merits of the case, the present bail application is hereby allowed and the petitioner is ordered to be released on bail on furnishing the bail bonds in the sum of Rs.50,000/- with two sureties (including one surety who will deposit Rs.50,000/- as cash surety) of like amount to the satisfaction of this Court.”

Aggrieved with the imposition of condition regarding deposit of Rs.50,000/- as cash surety, the petitioner has filed the instant petition.

Counsel for the petitioner has contended that deposit of cash surety is not mandated by Cr.P.C. and trial Court has no jurisdiction to direct furnishing of the same while granting bail. Reference has been made to the various provisions of the Code of Criminal Procedure, 1973 to buttress this argument. Moreover, he has submitted that due to outbreak of novel corona virus (Covid-19), lockdown was imposed by the Government. There is a cash crunch and the petitioner, who belongs to poor family, has not been able to arrange a surety for deposit of cash as a result of which he continues to be behind bars, despite having been granted bail.

Notice of motion.

Mr. Manish Bansal, Deputy Advocate General, Haryana, who is on conference call, accepts notice on behalf of the State. Advance copy of the paperbook has already been supplied upon him.

State counsel submits that the condition of cash surety has been imposed keeping in view the past conduct of the petitioner as the petitioner misused the benefit of bail and did not appear before the trial Court, as a result of which he was declared a proclaimed offender and he was eventually arrested. According to him, the condition of deposit of Rs.50,000/- as cash surety is justified in the facts and circumstances of the case.

I have considered the rival submissions.

In **Keshab Narayan Banerjee and another Vs. State of Bihar, AIR 1985 (SC), 166,** the Hon'ble Supreme Court held that condition imposed for enlarging one of the appellants on bail by furnishing security of Rs.1,00,000/- in cash or in a fixed deposit in a nationalized bank, appears to be excessively onerous and virtually amounts to denial of bail.

In **Sandeep Jain Vs. National Capital Territory of Delhi, 2002(2) Supreme Court Cases, 66,** the Apex Court held that the condition regarding deposit of Rs.2,00,000/- apart from furnishing personal bond of Rs.50,000/- with sound sureties as a condition precedent for bail, was unreasonable.

The High Court of Kerala in **Ramakrishna Pillai Vs. State of Kerala and another, 2013(7) RCR (Criminal) 246,** came to the conclusion that order passed by the learned Sessions Judge directing deposit of cash security to enable the petitioner to enjoy the pre-arrest bail is not in consonance with law and execution of a bond for a fixed sum with solvent securities would normally suffice and meet the ends of justice.

In its decision dated 06.04.2015 in *Navaneetha Krishnan and others Vs. State represented by The Inspector of Police, 2015(2) Mad WN (Crl.) 53*, the Madras High Court held that the Court cannot straightaway direct the accused to deposit cash surety. First of all, the Court has to direct execution of bail bond by the sureties if the release is not on his own bond. It is only in lieu of that deposit of cash security could be directed. The Court further observed that Section 440 Cr.P.C. provides that the bond amount should not be excessive, and when a person who has been directed to execute the bond either with surety or without surety is not able to furnish the sureties, then under [Section 445](#) Cr.P.C., he has the option to offer cash security and even then, it must be a reasonable amount and it should not be an arbitrary or excessive, otherwise it will amount to depriving the person of the benefit of bail.

In *Endua @ Manoj Moharana Vs. State, 2018(72) Orissa Criminal Reporter 611*, the High Court of Orissa held as under:-

“Insistence of furnishing cash security has not been approved by the Court. Though in the absence of any specific prohibition or any statutory norms for exercise of judicial discretion for the matter of bail, it cannot be said that the Magistrate or Court, as the case may be, has no jurisdiction at all to impose cash security as a condition for bail. Such a condition has been held by the Apex Court and different High Courts to be onerous, oppressive and virtually amounting to denial of bail. As per Section 445 Cr.P.C., it can be reasonably inferred that it is not the mandate of the Court that the Magistrate should insist on cash security in addition to personal bond with or without sureties.”

A co-ordinate Bench of this Court in *Runa Pasricha Rajpoot Vs.*

State of Haryana, 2019(2) RCR (Criminal) 873, held that there is no provision

in the Code of Criminal Procedure to deposit the amount in cash as a condition precedent for grant of bail and when a Court comes to the conclusion that a person is entitled to be released on bail, no condition other than those provided in Section 437(3) or 438(2) Cr.P.C. can be imposed.

On a perusal of the above judgments, it is clear that while granting bail under Chapter XXXIII of Code of Criminal Procedure, 1973, the provisions found therein have to be scrupulously followed by the Subordinate Courts. Section 441 of the Code provides that before any person is released on bail or released on his own bond, a bond for such sum of money as the Court thinks sufficient shall be executed by such person. Section 441 Cr.P.C. does not speak about deposit of any cash security. Only in certain contingencies, 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 of the Code of Criminal Procedure. Therefore, imposing condition of deposit of cash security alongwith execution of bond with two sureties is not permissible under law. Thus, the trial Court has contravened the provisions enshrined under Section 445 of the Code of Criminal Procedure and on that ground alone, the order passed by it, in so far as the imposition of deposit of amount of Rs.50,000/- by way of cash security in concerned, is liable to be set aside.

Additionally, it deserves to be noticed that the petitioner was ordered to be enlarged on bail pending trial vide order dated 17.03.2020 (Annexure P/1) subject to conditions imposed therein. Despite the concession of bail having been granted to him, he continues to languish behind bars for the last more than three months, which in itself shows that the condition regarding deposit of cash security is excessive and onerous inasmuch as the petitioner has

not been able to make arrangement for the cash surety. Still further, the prevailing situation arising due to the outbreak to Covid-19 pandemic has made things more difficult for the petitioner who belongs to weaker economic strata of the society.

On a consideration of the matter, this Court is of the view that the trial Court has erred in requiring the petitioner to furnish cash surety in addition to bail bond with sureties. The said condition in impugned order dated 17.03.2020 (Annexure P/1) is set aside and the impugned order is modified accordingly. The other conditions in the bail order shall remain unaltered.

Criminal Miscellaneous is disposed of.

(SUVIR SEHGAL)
JUDGE

09.07.2020

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No