

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

128

CRM-M-10065-2021

Date of decision: 08.04.2021

Veera Umuaro

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Tarun Singhal, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 482 read with Sections 440 and 445 of the Code of Criminal Procedure, 1973 (for short, “the Cr.P.C.”) for quashing of order dated 23.02.2021 passed by learned Additional Sessions Judge, SAS Nagar, Mohali whereby the application of the petitioner for reduction of bail amount fixed by learned Chief Judicial Magistrate, SAS Nagar, Mohali vide order dated 12.01.2021 and accepting the cash without surety in case FIR No.23 dated 21.05.2018 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the NDPS Act”) and Section 14 of the Foreigners Act at Police Station STF-IV, SAS Nagar, Mohali has been dismissed.

Briefly stated the facts giving rise to the filing of the present petition are that the petitioner, who is a citizen of Nigeria, has been convicted and sentenced under Section 21 of the NDPS Act and sentenced to undergo rigorous imprisonment for 10 years besides

payment of fine and imprisonment in default for conscious possession of 265 grams of heroin. Sentence of the petitioner was suspended by the Co-ordinate Bench vide order dated 07.01.2021 whereby the petitioner was ordered to be released on bail subject to imposition of appropriate terms and conditions to the discretion of learned Chief Judicial Magistrate/Duty Magistrate concerned who was also directed to keep into account the fact that the petitioner is not an Indian citizen. Accordingly, learned Chief Judicial Magistrate, Mohali ordered the petitioner to be released on bail on furnishing of personal bond and bond of one surety in the sum of Rs.2,00,000/-. The petitioner filed application submitting that the petitioner is a foreign national and she is unable to arrange any surety with the prayer that the amount of the bail bonds may be reduced and cash may be accepted in lieu of bail bonds. The said application was dismissed by learned Additional Sessions Judge, SAS Nagar, Mohali vide order dated 23.02.2021.

Feeling aggrieved, the petitioner has filed the present petition for quashing of the above-said order and for reduction of the amount of the bail bonds and accepting cash deposit.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has argued that the condition of furnishing personal bond and bond of one surety in the sum of Rs.2,00,000/- is unreasonable/excessive and the petitioner is unable to arrange any surety for such a high amount. The petitioner is ready to deposit cash amount of Rs.1,00,000/- in the trial Court in lieu of her personal and surety bonds. The petitioner filed application for

reducing the amount and allowing the petitioner to deposit the amount in cash which was wrongly dismissed by learned Additional Sessions Judge, SAS Nagar, Mohali vide order dated 23.02.2021. The impugned orders may be set aside and the amount of personal and surety bonds may be reduced to Rs.50,000/- each and deposit of Rs.1,00,000/- may be accepted in lieu of personal and surety bonds. In support of his arguments, learned Counsel for the petitioner has placed reliance on the judgments passed by this Court in ***Runa Pasricha Rajpoot Vs. State of Haryana : 2019(2) RCR (Criminal) 873*** and ***CRM-M-36982-2020 titled as 'Illorah Bathlomi Vs. State of Haryana' decided on 29.01.2021.***

On the other hand, learned State Counsel has argued that the petitioner is a foreign national and is likely to abscond. The order for her release on bail on furnishing of personal bond and bond of one surety in the sum of Rs.2,00,000/- does not suffer from any illegality and does not call for any modification for reduction of the amount. Therefore, the petition may be dismissed.

Section 440 of the Cr.P.C., which provides for amount of bond and reduction thereof, reads 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 the Court of Session may direct that the bail required by a police officer or Magistrate be reduced.”

Section 445 of the Cr.P.C., which provides for deposit instead of recognizance reads as under:-

“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.”

While ordering release of an accused on bail the Court has to fix the amount of bond with due regard to the circumstances of the case and financial condition of the accused and cannot impose condition of furnishing bail bonds in very high/excessive amount or impose any condition of deposit of unreasonable amount beyond the financial capacity/means of the accused. Fixing of very high/excessive amount or imposing any condition of deposit of unreasonable amount may amount to unjust denial of the relief of bail granted by the Court to the accused.

Similarly, asking an accused, who is a foreigner or a resident of distant place, to furnish a surety may also amount to unjust denial of the relief of bail granted by the Court due to his inability to furnish a local surety or arrange a surety from the distant place of his residence.

For preventing miscarriage of justice and providing just relief in cases of such hardships, Section 440 of the Cr.P.C. empowers the High Court or the Court of Session to reduce the amount of bail required by the Magistrate/trial Court while Section 445 of the Cr.P.C. empowers the Court to accept cash deposit instead of execution of the bail bonds.

In view of the facts and circumstances of the case and financial capacity/means of the petitioner, I am of the considered view that the amount of Rs.2,00,000/- fixed by learned Chief Judicial

Magistrate, SAS Nagar, Mohali for furnishing of personal and surety bonds by the petitioner is excessive and calls for reduction of the same and that facts and circumstances of the case also warrant allowing of the petitioner to deposit cash in lieu of bail bonds. Consequently, the impugned orders dated 12.01.2021 and 23.02.2021, which suffer from illegality in this regard, deserve to be modified/set aside.

Accordingly, the petition is allowed and order dated 23.02.2021 is set aside and order dated 12.01.2021 is modified to the extent that the amount of the personal and surety bonds is reduced to Rs.50,000/- each and the petitioner is ordered to be released on bail on deposit of amount of Rs.1,00,000/- in lieu of personal and surety bonds in the Court of learned Chief Judicial Magistrate/Duty Magistrate, SAS Nagar, Mohali subject to the condition that the petitioner shall not leave the country till decision of the appeal filed by her without permission of the Court and shall also furnish an undertaking to the Superintendent of the concerned jail in this regard at the time of her release on bail and shall after release on bail deposit her passport in the concerned police station to be kept in safe custody, if the same is not already seized by the police. All the concerned authorities be also informed regarding the condition imposed on the petitioner of not leaving this country till decision of the appeal filed by her without permission of the Court.

A copy of this order be sent to the District and Sessions Judge, SAS Nagar, Mohali for ensuring requisite compliance with the same.

08.04.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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