

CRM-M-17047-2021

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

CRM-M-17047-2021
Reserved on: 29.11.2021
Pronounced on: 13.12.2021

Sukhchain Chand and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vivek K. Thakur, Advocate
For the petitioners.

Mr. H.S. Sitta, Assistant AG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
136	21.09.2017	Kulgari, District Ferozepur	420 IPC

1. The petitioners apprehending arrest in the FIR captioned above, came up before this Court under Section 438 CrPC seeking anticipatory bail.

2. The bail petition is silent about criminal history. The status report also does not mention any criminal antecedents of the accused.

3. A brief narration of allegations relevant in deciding the present petition is that the complainant sent a written complaint to SSP, Ferozepur in the following terms:

He stated that Sukhchain Chand and his partner Prabhjot Kaur have cheated him by giving fake visa. It was contended that the complainant wanted to go abroad and the accused persons promised him to arrange visa for Rs.15,00,000/-. After taking money, they sent him fake photocopy of visa of Canada. In that way, they have defrauded him for Rs.8,00,000/- which he gave to the accused. The complainant mentioned the details of the account in which the money was deposited.

4. Learned counsel for the petitioners argued that infact a negotiable instruments case was pending between the parties, in which Rs.18,00,000/- are recoverable from the complainant and he further submitted that it is a money

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dispute which has given the criminal shape. Learned counsel further argued that the petitioners were given interim protection from arrest by this Court on 23.04.2021 and they have not misused the liberty and also fully cooperated with the Investigator. Counsel for the petitioners further contend that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioners and family.

5. Based on the reply filed by the State, while opposing the bail, it has been submitted by learned State counsel that after the detailed inquiry, the police found prima facie involvement of the accused and registered the FIR.

REASONING:

6. In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

7. 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 elaborative 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. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that 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. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

8. The incident pertains to the year 2015-16. Even if the complainant was very well aware that he is paying money to get a visa in a fraudulent means, he was not entitled to get bail. Given the conduct of the complainant, there is no justification to send the accused for pre-trial incarceration.

9. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioners make a

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case for bail, subject to the following 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.

10. In the event of arrest, 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/-), with one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Investigator. Before accepting the surety, the attesting officer must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the accused before the Court, keeping in mind the jurisprudence behind the sureties, which is to secure the presence of the accused.

11. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioners along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioners shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

12. The petitioners to also execute a bond for attendance in the concerned Court(s), as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

13. 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 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. Once the trial begins, the petitioners 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 promises to appear before the higher Court in terms of Section 437-A Cr.P.C.

14. 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 and the circumstances of the case, to dissuade them from disclosing such facts to the Police, or the Court,

or to tamper with the evidence.

15 The petitioners shall mention details of all assets, held either individually or jointly, including bank balances, fixed deposits, DEMAT Accounts, by way of an affidavit, and supply the original to the Investigator and its copy to the complainant/victim(s).

16. During the trial's pendency, if the petitioners repeat or commit 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 Cr.P.C.

17. 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 any language that the petitioners understand.

18. 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.

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

20. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then in that case, the Investigator/Officer-In-Charge shall give the petitioners notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

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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 accused shall also reciprocate through desirable behavior.

23. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

13.12.2021
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Whether speaking/reasoned: Yes
Whether reportable: No