

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21172-2021
Reserved on December 16, 2021
Date of Decision: December 17, 2021

Halimat Mohammed ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Bikram Chaudhary, Advocate
for the petitioners

Mr. Manish Bansal, DAG, Haryana

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
249	23.07.2020	Kotwali, District Faridabad	406, 419, 420, 467, 468, 471, 120-B IPC 1860 and Sections 14, 14B of Foreigner Act, 1946 and Section 12 of Passport Act ,1967

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 CrPC seeking bail.
2. In Para 12 of the bail application, the petitioner declares no criminal history.
3. It is for the first time that the petitioner has approached this Court for anticipatory bail.
4. A brief narration of allegations relevant in deciding the present petition is that on 23.07.2020, the police received a complaint from one Rajbir Singh, who stated that he is a resident of Aligarh and that Nishant Verma and his wife have cheated him. They called him from Mobile No.918447459866 and told him that a parcel had come from UK for him and to get that parcel, he will have to pay Rs.35000/-. He stated that he fell in their trap and deposited the said amount in their bank account. Based on this information, the police registered above captioned FIR. During the course of the investigation, the police found the involvement and connivance of the present petitioners and they were arrested.
- 5 (a) Learned State counsel during the course of arguments that the petitioner is a thug and robbing innocent people of this country. Further her visa has already expired and he should not be released on bail.
- 5 (b) At this stage, the Court inquired to learned petitioner’s counsel, that if in case the petitioner is released on bail then how would sureties be procured for securing her presence to face trial, as petitioner is foreign national.

6. Confronted with this, learned counsel for the petitioner voluntarily offered that instead of sureties amount, they will deposit an amount of Rs.1 lac by way of Fixed Deposit drawn in favour of concerned Judicial Magistrate and this being resorted to the provisions of Section 445 Cr.P.C., the Court accepts such request. He further contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

REASONING:

7. The petitioner is in custody since 24.07.2020. Thus, she has undergone more than 16 months of custody during the trial. . Keeping in view the nature and gravity of the offence and the period of incarceration undergone by her, further pre trial incarceration would be absolutely unjustified in the facts and circumstances of the case. Further on the question of the petitioner is foreign national and habitual of cheating the people of this country, it is for the executive to properly verified the antecedents before issuing *Visa*. This Court inclined to grant bail to the petitioner..

8. In LachhmanDass v. Resham Chand Kaler, (2018) 3 SCC 187, (Para 10), Hon'ble Supreme Court held that the law under section 439 CrPC is very clear and in the eye of the law every accused is the same irrespective of their nationality.

9. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In GudikantiNarasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of

Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a 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.

11. In Shokhista v. State, 2005 LawSuit (Del) 1316, Delhi High Court observed,

[5]. ...The accused is a foreign national and is not able to furnish a local surety. The same does not debar her from being admitted to bail. The provision of local surety is nowhere mentioned in the Code of Criminal Procedure and surety can be from any part of the country or without. In the present case, since the accused is a foreign national and is facing investigation under Sections 4, 5 and 8 of the I. T. P. Act and in view of the fact that the Petitioner is ready and willing to make a deposit in cash in lieu of the surety in addition to a personal bond, I am of the opinion that the ends of justice would be met in permitting her to do so. Consequently, I admit the Petitioner to bail on her furnishing a personal bond in the sum of Rs. 20,000/- and a cash deposit of the like amount in lieu of the surety to the satisfaction of the Trial Court. The Petitioner shall not leave the country without prior permission of the trial court and shall deposit her pass-port with the trial court.

12. Provided the accused is not required in any other case, the petitioner shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. One Lac (INR 100,000/-), and fixed deposit(s) for Rs. One Lac (INR 100,000/-), made in favour of Chief Judicial Magistrate, Faridabad, Haryana.

- a) Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g., Bank of America, Chase, HSBC, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the linked account.
- b) Such a fixed deposit need not necessarily be made from the account of the petitioner.
- c) If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.
- d) If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get the online liquidation disabled.
- e) The petitioner or his Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such information be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR number.
- f) After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.
- g) Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned to the

depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be.

13. The petitioner 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.

14. The petitioner 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 petitioner 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 petitioner 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 petitioner also promises to appear before the higher Court in terms of Section 437-A Cr.P.C.

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16. The petitioner 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.

17. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim and victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

18. The petitioner shall, within ten days of release from prison, procure a smartphone, and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned before. The petitioner shall keep the phone location/GPS always on the "ON" mode. Whenever the Investigating officer asks to share the location, then the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, calls nor format the phone without permission of the concerned SHO/I.O.

19. During the trial's pendency, if the petitioner repeats or commits 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. The petitioner shall bring it to the notice of the concerned court seized of the subsequent application about earlier caution 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.

20. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner understands.

21. In case the petitioner finds 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 petitioner 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.

22. 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.

23. Although the Court has granted bail in favour of accused, still neither the issue comes to an end, nor do the terms of justice. In the interest of equity and fair play, the matter needs further consideration. Given the following reasoning, this Court is requesting the Ld. Trial Court to expedite the trial.

24. 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.

25. The Court believes that the accused shall reciprocate the bail through desirable behavior.

26. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner 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

December 17, 2021
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Whether speaking/reasoned: Yes
Whether reportable: No