

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

120

**CRM-M-36982-2020
Date of decision : 29.01.2021**

Ilorah Bathlomi

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Vansh Malhotra, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana
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 Section 440 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of impugned order dated 06.03.2020 passed by learned Additional Sessions Judge, Fatehabad whereby the application of the petitioner for reduction of bail amount of Rs.2,00,000/- and accepting the cash deposit in case FIR No.63 dated 27.02.2019 registered under Sections 21(b) and 27(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been dismissed.

Briefly stated the facts giving rise to the filing of the present petition are that on 27.02.2019 the police party headed by ASI Bhal Singh apprehended co-accused Jarnail Singh, Mandeep Singh and Gurpinder Singh and on search recovered heroin weighing 40.70 grams kept in polythene pouch from the pocket of jeans of Gurpinder Singh. During interrogation they mentioned that they had purchased heroin from Nigerian in Delhi. The petitioner identified as the said Nigerian was arrested on 02.03.2019. His application for grant of bail was allowed vide order dated 08.05.2019 whereby he was ordered 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 he is unable to arrange any surety. He is ready to deposit surety amount in cash and the amount may be reduced. The said application was dismissed by learned Additional Sessions Judge, Fatehabad vide impugned order dated 06.03.2020 on the ground that if the petitioner is allowed to deposit surety amount in cash, the petitioner would abscond.

Feeling aggrieved, the petitioner has filed the present petition for quashing of the above-said order and for reduction of the bail bond amount 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 amount of Rs.50,000/- in the trial Court in lieu of his personal bond and is also ready to furnish a surety in the sum of Rs.50,000/-. 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, Fatehabad vide order dated 06.03.2020. The impugned order may be set aside and the amount of surety bond may be reduced and deposit of Rs.50,000/- may be also accepted in lieu of personal bond. In support of his arguments, learned Counsel for the petitioner has placed reliance on the judgment passed by Himachal Pradesh High Court in ***Criminal Miscellaneous Petition (Main) No.1017 of 2020 titled as Abhishek Kumar Singh Vs. State of Himachal Pradesh decided on 30.07.2020*** and judgment passed by this Court in ***Runa Pasricha Rajpoot Vs. State of Haryana : 2019(2) RCR (Criminal) 873***.

On the other hand, learned State Counsel has argued that the petitioner is a foreign national and is likely to abscond. The order for his 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.”

It is now well settled that while ordering release of a person 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.

In the present case, the petitioner was not arrested on the spot and no narcotic drug and substance was recovered from him and has been implicated in the case on the basis of disclosure statement of his co-accused as being the supplier of the contraband. The application filed by the petitioner for grant of bail has been allowed by the learned Additional Sessions Judge, Fatehabad. However, learned Additional Sessions Judge, Fatehabad has asked the petitioner to furnish personal bond and bond of one surety in the sum of Rs.2,00,000/-. In view of the facts and circumstances of the case and financial capacity/means of the petitioner, the amount of Rs.2,00,000/- fixed by learned Additional Sessions Judge, Fatehabad for furnishing of bail bonds is excessive and calls for modification by way of reduction of the same. The impugned orders dated 08.05.2019 and 06.03.2020 suffer from illegality which warrants modification of order dated 08.05.2019 and setting aside of order dated 06.03.2020.

Accordingly, the petition is allowed and order dated 06.03.2020 is set aside and order dated 08.05.2019 is modified to the extent that the petitioner shall be released on bail on deposit of amount of Rs.50,000/- in the Court of learned Additional Sessions Judge, Fatehabad in lieu of his personal bond and furnishing of bond of one

surety in the sum of Rs.50,000/- subject to the condition that the petitioner shall not leave the country till decision of the case against him without permission of the Court and shall furnish an undertaking in this regard. All concerned authorities be also informed regarding the condition imposed on the petitioner of not leaving this country till decision of the case against him without permission of the Court.

29.01.2021

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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