

**IN THE HIGH COURT OF PUJAB & HARYANA AT
CHANDIGARH.**

CRM-M-44900-2021

Date of Decision:-02.11.2021

Sarabjit Singh @ Shambu.

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Brijeshwar Singh Bhalla, Advocate for the Petitioner.

Mr. Sidakmeet Singh Sandhu, AAG Punjab.

(THROUGH VIDEO CONFERENCE)

ANOOP CHITKARA, J.(ORAL)

FIR No.	Dated	Police Station	Sections
161	16.7.2021	Civil Lines District Amritsar	420, 467, 468, 471 and 120-B IPC

1. The petitioner, who is in prison for intentionally identifying a wrong person as surety who was infact impersonating someone else and consequently is in custody has came up before this Court under Section 439 Cr.P.C., seeking regular bail.
2. In Para 13 of the bail application, the petitioner declares having no criminal history. Ld. Counsel for the bail petitioner states on instructions that the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed was more than three years. The status report also does not mention any criminal past of the accused.
3. Briefly, the allegations against the petitioner are that the petitioner has been arraigned as an accused in the abovementioned FIR for wrongly identifying the surety who had impersonated someone else. The surety reveals his name as Amarjit and identifier Kuldeep Singh also showed his identity card. Later

on it was found to be false which led to the registration of the FIR captioned above.

4. Ld. Counsel for the petitioner contends that the custodial investigation would serve no purpose whatsoever and incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

5. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

REASONING:

6. The petitioner is already in custody and further incarceration at this stage is not required. However, the bail shall be subject to the following

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. Given the nature of allegations, no pre-trial incarceration is required. Without commenting on the case's merits and the circumstances peculiar to this case, the petitioner makes a case for release on 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 Cr.P.C., 1973.

9. 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/-), and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Special Judge/Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Ilqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that in case the petitioners-accused fail to appear in Court, then such sureties are capable to produce the petitioners-accused before the Court,

keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

10. The furnishing of the personal bond shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) The petitioner to execute a bond for attendance in the concerned Court(s). 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.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) 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 of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

d) 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 may be 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.

e) Petitioner shall never stand as surety or a bank guarantor for any person till the pendency of this trial.

11. Given the conduct, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within 30 days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case.

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. 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.

13. 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 vernacular and if not feasible, in Hindi.

14. 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.

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

16. 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.

17. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

18. *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.

(ANOOP CHITKARA)
JUDGE

November 02, 2021
Vinay

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No