

**202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-41167-2020
Date of Decision : 26.10.2021**

Raman Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARAPresent: Mr. Sandeep Sharma, Advocate
for the petitioner.

Ms. Jasleen Kaur Sidhu, AAG, Punjab.

Through Video Conferencing**ANOOP CHITKARA, J.(ORAL)**

FIR No.	Dated	Police Station	Sections
25	15.02.2020	Machhiwara, District Khanna.	120-B and 420 of IPC, 1860.

The petitioner, apprehending arrest came up before this Court under Section 438 Cr.P.C., seeking anticipatory bail.

2. In Para 7 of the bail application, the petitioner declares criminal history of the accused which is mentioned below :-

- i) FIR No.0094, dated 11.05.2018 under Section 420 of IPC and Sections 24(1)(b), 24(1)(f) and 24(1)(g) of Emigration Act, 1983 registered at P.S. Rama Mandi, District Police Commissionerate, Jalandhar, Punjab;
- ii) FIR No.0016, dated 21.02.2020 under Section 420 of IPC and Section 13 Punjab Prevention of Human Smuggling Act, 2012, registered at P.S. Subhanpur, District Kapurthala, Punjab.

That on 03.02.2020, the complainant filed the complaint before the aforesaid police station mentioning about the act of cheating against him by the accused. Based on such allegations, there is no necessity to mention the details of the allegations because of the amount involved and the fact prima facie possibility of it being a consumer dispute cannot be ruled out.

3. Without going further into the details of the allegations, prima facie based on such complaint, the Police registered the FIR captioned above.

4. Ld. Counsel for the petitioner argues that the petitioner be afforded a final chance to reform and he assures in the Court that the petitioner in future shall not indulge in any criminal activity.

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. 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 **Gudikanti Narasimhulu 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.

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. Vide order dated 21.01.2021, the petitioner was given interim anticipatory bail and was directed to join the investigation as and when called for. Given the assurance of the accused conveyed through his counsel, this Court is inclined to give a final chance to the accused to mend his ways and reform. Consequently, this Court is granting bail to the petitioner.

9. The petitioner shall surrender his firearms, if any within a period of one week from today.

10. Be that as it may, given the nature of allegations, no incarceration is required in this case.

11. The petitioner shall stay far away from the radius of one kilometer from the place of residence of the complainant and also of the victim.

12. Without commenting on the case's merits and the circumstances peculiar to this case, the petitioner makes a case for release on bail.

13. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict 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.

14. The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of **Rs. Ten thousand (INR**

10,000/-), and shall furnish two sureties of Rs. Twenty-five thousand (INR 25,000/-) each, to the satisfaction of the Investigator. Before accepting the sureties, the Attesting Officer must satisfy that in case the accused fails to appear in Court, then such sureties are capable to produce the accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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.

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

22. *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.*

23. In the facts and circumstances peculiar to this case, the present petition is allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

October 26, 2021
Manpreet

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No