

CRM-M-4424-2022

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

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Date of decision: February 03, 2022

Sarwan Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Balbir Singh Jaswal, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

Criminal Complaint	No. 6348 dated 22.11.2018 under Section 138 of the Negotiable Instruments Act, District Amritsar
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1. The petitioner apprehending arrest due to issuance of non bailable warrants, in the complaint captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. Ld. Counsel for the petitioner contends that all the offences are bailable.

3. The contention on behalf of the State is that given the judicial pronouncements, anticipatory bail cannot be granted once non-bailable warrants have been issued.

REASONING:

4. The petitioner is a first offender.

5. The explanation offered by the petitioner is mentioned in paragraphs of the petition, which are extracted as follows:

"That since the year 2018, the petitioner is appearing in the trial court and pursuing litigation and engaged his counsel to defend the same. Some time the petitioner could not appear due to his work thus he moved an application for exemption from his personnel appearance. The petitioner could not appear on 08.03.2021 though he has intimated his counsel for his non appearance. Thereafter, the counsel intimated the petitioner that due to Covid-19, still there is no need to appear as the clients are not allowed to enter the courts and it was further intimated that as and when the needs arises, he will intimated accordingly, the petitioner was intimated that the date for his appearance is now 19.12.2021. On 19.12.2021 when the petitioner contacted his counsel in his chamber and asked him the date then it came to his notice that infact date was 19.10.2021 instead of 19.12.2021. Due to wrong impression the petitioner could not appear on the date fixed and thus his bail bond and surety bond have been cancelled. The copy of the order dated 19.10.2021 is annexed as annexure P-2."

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6. The petitioner explains that the non-appearance was due to miscommunication. There is nothing to disbelieve his version.

7. A balanced approach would work as an incentive, a catalyst, speeding up the process, and bringing the guilty to Justice and Justice to the guilty.

8. 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.

9. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory 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 Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, this Court observed,

[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer.

11. Given above, In the event of arrest, the petitioner shall be released on bail in the case mentioned above, subject to his furnishing a personal bond of Rs. Ten Thousand only (INR 10,000/-), and furnishing one surety for Rs. Twenty-Five thousand only (INR 25,000/-), to the satisfaction of the concerned Investigator. Before accepting the sureties, the concerned officer must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioner before the Court.

12. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the the attesting officer, a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. 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 well-established and stable private banks, with the clause of automatic renewal of principal, and the interest reverting to the linked account. The arresting officer shall give a time of ten working

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days to enable the accused to prepare a fixed deposit. Such a fixed deposit need not necessarily be made from the applicant's account. 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. If made online, its printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest 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 and FIR number. After that, the applicant shall hand over such proof and endorsement to the concerned police station. Such officer shall have a lien over the deposit until discharged by substitution, and in case any court takes cognizance, then such court, upon which the investigator shall hand over the deposit to such court, which shall have a lien over it up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be. If any, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

13. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply for substitution of fixed deposit with surety bonds and vice-versa.

14. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner 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 petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

15. 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.

16. **The petitioner to appear on each and every date without fail.**

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 any language that the petitioner understands.

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*

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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

February 03, 2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.