

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6864-2022
Reserved on: 08.07.2022
Pronounced on: 11-07-2022

Barinder Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikram Chaudhri, Senior Advocate with
Ms. Hargun Sandhu, Advocate,
Mr. Keshavam Chaudhri, Advocate ,
Mr. Parvesh Chaudhary, Advocate and
Ms. Bhavika, Advocate for the petitioner.

Mr. Gaurav Garg Dhuriwala, Senior DAG, Punjab.

Ms. Reeta Kohli, Senior Advocate with
Ms. Vandana, Advocate for the complainant.

Mr. Gopal Singh Nahel, Advocate for PACL.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
79	16.07.2020	City Zira, District Ferozepur	406, 420, 467, 468, 471, 120-B IPC

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (Cr.P.C) seeking bail.
2. In paragraph 50 of the bail application, the accused declared that no NDPS case was pending against her and it implies that there were other cases pending against her; however she chose not to disclose the details of all such cases. Be that as it may, this court is not considering the bail on the merits, but only on the grounds of prolonged pre-trial custody, as such the silence on the part of the petitioner is not being considered as a factor to deny bail.
3. Mr. Vikram Chaudhri, Sr. Advocate has confined his submissions to bail on the grounds that the petitioner is a woman, with two minor children, and the matter is triable by Magistrates, and she has already undergone more than a year of pre-trial

incarceration.

4. Ms. Hargun Sandhu and Bhavika Advocates, on instructions received from the petitioner stated that the petitioner's passport is already with the Investigator and she shall not flee from the country and further stated that in case she is released on bail, then within the stipulated time, she shall declare all her assets, without concealing anything, whatsoever, and in case such declaration is not made or anything is concealed than on this ground alone, her bail shall be liable to be cancelled.

5. While opposing the bail, Mr. Gaurav Garg Dhuriwala, Ld. Sr. DAG representing the State contends that given the past conduct, the accused is a flight risk and is likely to indulge in crime once released on bail. Ms. Reeta Kohli, Sr. Advocate for the complainant and Mr. Gopal Singh Nahal, Advocate for the PACL have also strenuously opposed the bail.

6. The petitioner has been in custody for the last one year. The matter is triable by the Magisterial Courts, which have limitations on imposing the higher sentence, and the trial is likely to take time to conclude. Given this and, more specifically, the prolonged pre-trial incarceration, coupled with the fact that the petitioner is a woman and her two minor children are away from her for more than a year, on these grounds alone, further pre trial incarceration might not be justiciable, subject to the petitioner complying with the undertaking made through her counsel, and subject to her complying with the terms and conditions of this bail order.

7. 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 bail. 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.

8. 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.

9. 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.

10. In Mahidul Sheikh v. State of Haryana, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53,[Law Finder Doc Id # 1933969], 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. Give above, 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. Ten thousand (INR 10,000/-) and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the

sureties, the concerned Court 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 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 Cr.P.C, 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 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. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within ten days from release from prison 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, provided otherwise permissible in the concerned rules.

18. Within thirty days from the release from prison, the petitioner shall declare under her signatures the following particulars, with a copy each to the aggrieved company, the official respondents, and the Investigators:

- (a). The complete details of bank account numbers, addresses, and bank statements w.e.f. 1st April 2020 till the date of this order;
- (b). The complete details of all fixed deposits, bonds, debentures, w.e.f. 1st April 2015 up to at least till the date of this order;
- (c). The complete details and balances in all DEMAT accounts w.e.f. 1st April 2015 up to at least till the date of this order;
- (d). The current market value of jewellery, sovereign metals, and all precious articles, held either individually or jointly, up to the date of filing of the extension application;
- (e). Cash-in-hand up to the date of filing of the extension application;
- (f). Details of all immovable properties up to the date of filing of the extension application;
- (g). Annual income from all sources;

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. 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 remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not

canceled due to non-appearance or breach of conditions.

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. If the petitioner finds 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.

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. 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.

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

25. *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

July 11, 2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	YES.