

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13016-2022
Reserved on: 19.07.2022
Pronounced on: July 22, 2022

Sunil Kumar and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gurinder Singh Hayer, Advocate for the petitioners.

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
48	14.03.2019	Civil Lines, District Bathinda	406, 420, 120-B IPC

1. The petitioners, incarcerated upon their arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. The petitioners are silent about criminal history.
3. The petitioners induced the gullible persons to invest money in the company and the concerned administration and departments of finance, also did not intervene at that point of time, which led to the petitioners' usurping more and more money and then fleeing after closing the aforesaid company.
4. Ld. Counsel for the petitioners contends that the pre-trial incarceration would cause an irreversible injustice to the petitioners and family.
5. Ld. counsel representing the State opposes bail.

REASONING:

6. In paragraph 3 of the bail petition, it is explicitly mentioned that the petitioners are in custody since 04-06-2019. Given the nature of offences for which the petitioners are being prosecuted, there are absolutely no reasons for even a day's delay to grant bail during trial. Thus, solely on the grounds of period of pre-trial incarceration already undergone, they are entitled to bail. Given the reasons for consideration of bail,

criminal history is not relevant at this stage.

7. 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.

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 petitioners make 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 petitioners shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. Ten thousand (INR 10,000/-) each and shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), each 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 Ilqa 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 petitioners before the Court.

12. In the alternative, the petitioners may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), each and hand over to the concerned court a fixed

deposit(s) for Rs. Ten Thousand only (INR 10,000/-), each made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit 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 the principal and the interest reverting to the linked account.

13. The 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 court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, as the case may be. 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.

14. 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 to the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.

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

16. The petitioners 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.

17. During the trial's pendency, if the petitioners repeat or commit 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.

18. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioners understand.

19. If the petitioners find bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, if the petitioners find 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 petitioners 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.

20. 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.

21. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioners notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

22. 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.

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

24. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners 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 22, 2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.