

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40295-2022
Reserved on: 05.09.2022
Pronounced on: 07.09.2022

Barm Chand Azad @ B.C. Azad ...Petitioner

Versus

CBI, ACB, Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amardeep Singh Gill, Advocate for the petitioner.

Ms. Shubhra Singh, Advocate for the respondent-CBI.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
RC2172019A 0007/CBI /ACU-IV/AC- II/New Delhi	15.10.2019	CBI, ACB, Chandigarh	120-B, 420, 467, 468, 471 IPC and Section 13 (2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 Cr.P.C. seeking anticipatory bail.
2. Ld. Counsel for the petitioner contends that the challan stands filed and now the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
3. Ld. counsel representing the CBI opposes bail.

REASONING:

4. The CBI did not arrest the petitioner during investigation and have now launched prosecution by filing report under section 173 Cr.P.C. Given the aforesaid and the penal provisions imposed and the sentence provided by the Legislature, the nature of allegations coupled with the fact that the petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course-correct.
5. 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 Cr.P.C., 1973.

6. 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.

7. 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/Court. 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.

8. 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/court, 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 Cr.P.C., 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.

9. 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.

10. 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.

11. 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.

12. 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 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, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

13. 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.

14. 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.

15. 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.

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

17. *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

07.09.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.