

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-2030-2022
Date of decision: 14-10-2022

Alisha Kharmutee
.....Petitioner(s)

v.

CBI
.....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: - Mr. H.S. Maan, Advocate
for the petitioner.

Ms. Shubhra Singh, Standing Counsel
for the respondent-CBI.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
RCCHG2016A0022	01.10.2016	CBI, Chandigarh	120-B, 420, IPC and 66-D I.T. Act

Criminal Case no. before trial Court	1960 of 2017
CRA No. before the Appellate Court	141 of 2022

Challenging the order dated 30.8.2022 passed by the Special Judge, CBI, Chandigarh, vide which the Lower Appellate Court had directed the petitioner-convict to furnish surety bonds in the sum of Rs.30,000/- and also to make payment of fine, the petitioner-convict has come up before this Court by filing the present revision petition.

2. Vide order dated 30.3.2022, Special Judicial Magistrate, CBI, Chandigarh had convicted the petitioner under Sections 120-B, 420 read with Section 120-B IPC and Section 66-D of the Information Technology Act and sentenced her to undergo imprisonment for 1½ year and to pay fine of Rs.2,000/- on all three counts. The petitioner challenged the said judgment by filing an appeal before the Special Judge,

CBI Court, Chandigarh and the said Court vide order dated 30.8.2022, suspended the sentence of the petitioner-convict subject to furnishing surety bonds and deposit of fine, as aforesaid.

3. Prayer of the petitioner-convict is that she is a poor lady and belongs to North-eastern States and unable to arrange a surety.

4. 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.

5. It is strange that despite the aforesaid judgment passed by this Court, the lower Appellate Court did not give an option for the petitioner-convict to furnish surety through fixed deposit, which she is willing.

6. Be that as it may, the impugned order dated 30.8.2022 passed by the Special Judge, CBI, Chandigarh is modified in the following terms:-

"provided the applicant is not required in any other case, the applicant shall be released on bail in the FIR and the case captioned above, till the next date, in the following terms:-

(a) Applicant to furnish personal bond of Rs.Ten thousand (INR 10,000/-);
AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of its non-availability, any nearest Illaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that such surety can produce the accused before the court.

OR

(b) Applicant to hand over to the concerned court a fixed deposit for Rs. Ten Thousand only (INR 10,000/-), with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the '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 sector banks. The fixed deposit need not necessarily be made from the applicant's account.

(c). 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, and at that stage, 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.

(d). It shall be the total discretion of the applicant to choose between surety bond and fixed deposit. It shall also be open for the applicant/petitioner to apply to the Investigator or the concerned court to substitute the fixed deposit with surety bonds and vice-versa.

(e). On the reverse page of personal bond, the applicant shall mention her/his permanent address along with the phone number, preferably that number which is linked with the AADHAR, 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.

(f). The applicant is to also execute a bond undertaking to appear before the court as and when asked to do so. The presentation of the personal bond shall be deemed acceptance of the declarations made in the application for suspension of sentence and all other stipulations, terms, and also of this order.”

7. The second prayer of the petitioner is that there is no necessity to deposit the fine because once an appeal has been admitted, then Section 357(2) CrPC provides for stay of fine.

8. A bare perusal of Section 357 CrPC would imply that sub Section 2 of Section 357 CrPC would apply only when under Section 357(1), out of the amount of fine, the Court has also directed payment of compensation to the victim. In the present case, a perusal of the judgment clarifies that the trial Court did not direct payment of compensation from the meagre amount of fine of Rs.6,000/-

9. In Satyendra Kumar Mehra @ Satendera Kumar Mehra v. State of Jharkhand, (2018) 15 SC 139, Hon’ble Supreme Court holds,

“37. In view of the foregoing discussion, we are of the view that Section 357(2) Cr.P.C., 1973 was not attracted in the present case since there was no direction of payment of any compensation out of the fine imposed by the trial court as part of sentence. Section 357 Cr.P.C., 1973(2) comes into play only where any order of payment of compensation utilising the fine imposed as sentence under Section 357(1) Cr.P.C., 1973 or compensation as directed under Section 357(3) Cr.P.C., 1973 is made. Present being neither a case of Section 357(1) Cr.P.C., 1973 nor Section 357(3), sub-section (2) of Section 357 Cr.P.C., 1973 is clearly not applicable and the submissions raised by the learned counsel for the appellant are without any substance. We, thus, do not find any infirmity in the impugned order of the High Court where the High Court has directed the appellant to deposit the fine awarded by the trial court. In the result, the appeal is dismissed.”

10 Given above, the prayer for stay of fine is dismissed. However, the petitioner is permitted to deposit the fine on or before the date she furnishes her bonds.

11. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the applicant 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.*

12. **Petition disposed of in aforesaid terms.** All pending applications, if any, stand closed.¹

(ANOOP CHITKARA)
JUDGE

October 14, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No