

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43823-2022
Date of order: 22.09.2022

Inderjit Singh & others
...Petitioner (s)
Versus
State of Punjab
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present:- Mr. HPS Ghuman, Advocate
for the petitioner(s).
Mr. H.S. Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
21	17.3.2022	Bhadson, Tehsil Nabha, Distt. Patiala	406, 420, 120-B IPC

1. The petitioners apprehending arrest in the FIR captioned above have come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 32 of the bail petition, the accused declares that he has no criminal antecedents.
3. The allegations are duping the complainant by taking advance for sale of land.
4. Ld. Counsel for the petitioners contends that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioners and family.
5. Ld. counsel representing the State opposes bail.

REASONING:

6. I have perused the documents. The amount alleged is disputed for not just for flimsy reasons, but there appears to some weight to doubt the amount, whether it was Rs 10 lacs or 40 lacs or 1.4 crores. Be that as it may, the petitioners could not dispute the receipt of Rs. 10 lacs. Given the penal provisions imposed and the sentence provided by the Legislature, the nature of allegations coupled with the fact that the petitioners are first offender, and one of the relevant factors would be to provide an opportunity to course-correct, bail is granted to the petitioners subject to their handing over a fixed deposit of Rs.10 lacs in favour of Chief Judicial Magistrate, Patiala with automatic renewable clause and the said fixed deposit should be made either from a Nationalised Bank or Central Bank or from any other suitable private bank. It is made clear that in case the fixed deposit is not handed over to the concerned CJM on or before 10.10.2022, then this bail order shall automatically stand vacated without any further reference to this Court.

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. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

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. Given above, in the event of arrest, the petitioners 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/-), each, and furnishing one surety for Rs. Twenty-Five thousand only (INR 25,000/-), each, 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 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 the attesting officer, a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), each, 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 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 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.

15. 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.

16. The petitioners are directed to join the investigation within seven days and also as and when called by the Investigator. The petitioners shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioners 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 petitioners 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.

17. The petitioners 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.

18. Within fifteen days from today, the petitioners shall forward to the Investigator/SHO and the complainant/victim(s) the complete details of bank account numbers with addresses, fixed deposits, DEMAT account numbers, the current market value of jewelry, sovereign metals, all precious articles, held either individually or jointly, and cash-in-hand. ***If the petitioners fail to comply with this condition, then on this ground alone the bail might be canceled, and the complainant may file any such application for the cancellation of bail, and State shall file the said application.***

19. During the trial's pendency, if the petitioners repeat 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. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the

liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.” In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon’ble Supreme Court holds that “The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

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

27. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, within seven days. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

28. *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

September 22, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.