

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10883-2023 (O&M)
Reserved on: 13.03.2023
Pronounced on: 29.03.2023

Parminder Singh Bajwa
... Petitioner(s)

Versus

State of Punjab
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Gautam Dutt, Advocate
for the petitioner(s).

Mr. IPS Sabharwal, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
99	1.8.2022	Kulgari, District Ferozepur	22 NDPS Act and Sections 212, 216, 120-B (added later on) and thereafter, Sections 212, 216 IPC deleted.

1. The petitioner incarcerated for violating the above-mentioned provisions per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail and in the alternative, prayed for interim bail to get better medical treatment at his own level for some period.
2. Paragraphs 56 to 61 need consideration, which read as under:-

“55.That the petitioner is in custody in the preset FIR from 21.09.2022 and his health condition is not good. It is pertinent to mention here that the petitioner is suffering from T.B. The petitioner during his confinement seriously remained ill and his condition worsened. The petitioner was admitted in Jail Hospital and thereafter, he was referred to the Guru Gobind Singh Medical College and Hospital, Faridkot.

56. That the petitioner remained admitted in above said Hospital from 11.01.2023 to 25.01.2023. During the treatment of petitioner, it came to fore that the petitioner is suffering from T.B. and his one lung has got damaged. The petitioner was discharged from the said hospital on 25.01.2023.

57. That however, on 26.01.2023, the Superintendent, District Jail, Muktsar Sahib, considering the health condition of the petitioner vide letter dated 26.01.2023 addressed to the Medical Superintendent, Guru Gobind Singh Medical College and Hospital, Faridkot, requested him to admit the petitioner in the said hospital for better treatment as the Medical Officer of District Jail, Muktsar Sahib, considering the critical health condition of the petitioner had recommended for immediate admission of the petitioner to the aforesaid hospital.

58. That thereafter, the petitioner was again remain admitted in the Guru Gobind Singh Medical College and Hospital, Faridkot from 26.01.2023 to 30.01.2023, however, considering the health condition of the petitioner, the concerned doctors referred the petitioner to P.G.I., Chandigarh on 30.01.2023. The relevant medical record of the petitioner regarding his treatment at Guru Gobind Singh Medical College and Hospital, Faridkot is being annexed herewith as Annexure P-21.

59. That on 30.01.2023, the petitioner was examined at P.G.I, Chandigarh and he was referred back to Guru Gobind Singh Medical College and Hospital, Faridkot. A copy of the said medical record dated 30.01.2023 is being annexed herewith Annexure P-22. as

60. That it is further relevant to mention here that the petitioner is seriously ill and is not being given best medical treatment by the Jail Authorities. The petitioner was again medically examined on 23.02.2023, at Guru Gobind Singh Medical College and Hospital, Faridkot considering his serious health condition and he has been referred to P.G.I, Chandigarh for better medical treatment. A copy of the said medical record is being annexed herewith as Annexure P-23.

61. That the above said facts of the case in hand clearly show that the health condition of the petitioner is serious and he deserves to be given specialized medical treatment to recover from serious ailment.”

3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that the denial of interim bail would cause an irreversible injustice to the petitioner and family.

4. While opposing the bail including interim bail, the State does not dispute the factum of the grounds on which the petitioner is seeking interim bail, and placed on record the medical record of the petitioner.

REASONING:

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 for a limited period, 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.

6. In **Mahidul Sheikh v. State of Haryana**, Neutral Citation No: 2022:PHHC:003277, [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, provided the petitioner is not required in any other case, on appearance in the trial on the date fixed or any date before the next date, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner 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 non-availability, any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b) Petitioner 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 petitioner'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 petitioner to choose between surety bond and fixed deposit. It shall also be open for the 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 petitioner 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 petitioner is 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 declarations made in the bail petition and all other stipulations, terms, and conditions of section 438(2) of the Code of Criminal Procedure, 1973, and also of this bail order.

8. 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.

9. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of one kilometer from the victim's home during the period of this interim bail. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (Crl.) 458; and Aparna Bhatt v. State of Madhya Pradesh, 2021 SCC Online SC 230.

10. Immediately on reaching home/venue, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned above. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, call logs nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till surrender.

11. In return for the limited protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. **It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had cautioned the petitioner to reform and live a normal life but did not mend his ways.**

12. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. 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."

13. 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.
14. 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.
15. The petitioner shall surrender in prison from where he was released, on or before Aug. 31, 2023, by 2 p.m.
16. *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

March 29, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No