

CRM-M-11893-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11893-2023
Reserved on: 10.03.2023
Pronounced on: 11.04.2023

Mann Singh Garcha ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Navjot Singh, Advocate for the complainant.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
244	26.02.2022	Division No.5, Ludhiana, District Ludhiana	420, 465, 467, 468, 471, 120- B IPC

1. The petitioner apprehending arrest in the FIR captioned above, on the allegations of cheating, forgery, and fraud etc., has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 26 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. Petitioner's counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. State's counsel opposes the bail and so does the complainant.

REASONING:

5. The petitioner is aged 80 years. Given 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

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provide an opportunity to course-correct. Even a prima facie perusal of paragraphs 5 & 6 of the bail petition need consideration for bail.

6. As per the latest World Development Indicators, the life expectancy at birth for an Indian resident averages 69.887 years. Prison Statistics India 2020, compiled by the National Crime Records Bureau (Ministry of Home Affairs), Government of India, reveals that very few States provide special treatment or facilities for old age prisoners. The purpose of sentencing is two-fold: deterrence and retribution; and is intended to send a strong message to the people not to violate the law enacted by the State, simultaneously consoling and assuring the victims of the justice system put in place by the State and preventing the takeover of law into their own hands. However, this entire exercise loses its purpose when such an older person is involved. Reformation to re-enter society as an objective of prisons becomes futile as the person is on the last leg of their life. Further, an older person cannot be meted out harsh treatment to give an example to society as it would be tantamount to cruelty. Mere existence in confinement seems more challenging than living without special arrangements and the psychological support of family members for such persons. Thus, would it be justifiable to deny bail to a centenarian, nonagenarian, centenarian, or octogenarian? It can have just one answer: a thunderous NO anywhere globally. The only exceptions are extreme perversity, highly heinous crimes, mass slaughters, or recidivists who refuse to mend their ways to blend with the community without disrupting the social order. Thus, denying bail to people over a particular age is hazardous, and there is a need to be sensitized about the sufferings associated with old age, realizing that sending these older people to jails or prisons serves no purpose whatsoever, for whom so ever, wheresoever. In the background of these peculiar facts, coupled with the petitioner being 80 years, the Court is inclined to grant bail to the petitioner.

7. 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 CrPC, 1973.

8. 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.

9. Given above, provided the petitioner is not required in any other case, 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 investigator/SHO. Before accepting the surety, the concerned officer must satisfy that if the accused fail to appear in court, then such surety can produce such accused before the court.

OR

(b) Petitioner to hand over to the concerned investigator/SHO 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 favour of the 'Chief Judicial Magistrate' of the concerned district. The 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). In case of the launching of the prosecution, the said fixed deposit be forwarded to the concerned court along with the police report/challan under 173 CrPC.

(d). 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.

(e). It shall be the discretion of the petitioner to choose between surety bonds and fixed deposits. 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.

(f). On the reverse page of personal bond, the petitioner shall mention her/his permanent address along with the phone number, preferably that numbers 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.

(g). 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.

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

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

11. 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 petitioner fails 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.***

12. 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.

13. The conditions mentioned above imposed by this Court are 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."

14. 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.

15. If the petitioner finds 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 petitioner 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.

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16. 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.
17. 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 petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.
18. 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.
19. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
20. *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

11.04.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.