

CRM-M-12126-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12126-2020
Reserved on: 23.11.2023
Pronounced on: 05.12.2023

Ajit Pal Singh Brar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikram Chaudhri, Sr. Advocate with
Mr. Parvez Chaudhary, Advocate
Mr. Harminder Singh, Advocate
Ms. Hargun Sandhu, Advocate
Mr. Keshvam Chaudhri, Advocate and
Mr. Digvijay Singh, Advocate
for the petitioner(s).

Mr. Ravinder Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
10	21.06.2019	Vigilance Bureau, Flying Squad, District Mohali	7, 13(1)(a) r/w 13(2) of Prevention of Corruption Act 1988 and Sections 409, 420, 465, 467, 468, 471, 120-B IPC

1. The petitioner(s) apprehending arrest in the FIR captioned above, has come up before this Court by filing second petition under Section 438 CrPC, seeking anticipatory bail.
2. In paragraph 7 of the bail petition, the accused declares that he has no criminal antecedents.
3. The petitioner(s) contends that custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioner(s) and family.
4. The state's counsel opposes the bail.
5. Apprehending arrest in the FIR captioned above, petitioner Ajit Singh Brar had filed anticipatory bail petition bearing No.CIS No.2569/18.10.2019, under Section 438 CrPC before the Special Judge, SAS Nagar, Mohali. Vide a detailed order dated 22.10.2019, the said bail application was dismissed. Challenging the same, the petitioner had come up before this Court by filing CRM-M-652-2020. Vide a detailed order dated

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12.02.2020, Coordinate Bench of this Court had dismissed the said petition. Challenging the same, the petitioner had approached the Hon'ble Supreme Court of India by filing Writ Petition (Criminal) No.328/2019. Vide order dated 02.12.2019, the petitioner's counsel had prayed for withdrawal of the petition with liberty to approach this Court. The petition was dismissed with aforesaid liberty. Perusal of the order passed by the Hon'ble Supreme Court of India (Annexure P-14) does not state that before filing the bail petition, to surrender before the Court, shall be pre-requisite. It implies that Supreme Court had permitted the petitioner to file a bail petition under Section 438 CrPc itself afresh before this Court. Apart from analysis of the order passed by the Hon'ble Supreme Court, even the counsel for the petitioner argued that the Hon'ble Supreme Court had given liberty to file petition under Section 438 CrPC itself and after that they had filed the present bail petition bearing No. CRM-M-12126-2020 on 06.05.2020. It would be appropriate to refer to the order dated 11.05.2020, passed by the Co-ordinate Bench of this Court, in which the Court had recorded the fact that the petitioner's counsel had sought adjournments to justify maintainability of the second petition and after that on 21.05.2020, the same Hon'ble judge who had dismissed the bail petition on merits, had granted interim relief to the petitioner in the same terms as was granted to the similarly placed co-accused i.e. Vikas Sharma, Gulshan Chopra, Pankaj Sharma in CRM-M Nos.47759, 50380 & 51583 of 2019 respectively.

6. Perusal of the file shows that present petition was taken up for hearing on 13 occasions until 07.08.2023 and even after the Covid had come to an end and all the restrictions already lifted wayback, after that this matter was listed before this Court on 23.11.2023 and on that date, arguments were heard and order reserved. Perusal of the interim order vide which the petitioner was granted bail, explicitly points out that non-bailable warrants were issued against co-accused, who were granted relief and primary a reason was that the petitioner was also given same relief as was given to petitioners Vikas Sharma, Gulshan Chopra & Pankaj Sharma, in CRM-M-47759-2019, 50380-2019 & 51583-2019 respectively.

7. It remains undisputed that the said orders are continuing in these matters. In addition to that, there is no allegation that during the period of interim bail, the petitioner in any way manner violated any of the term or condition of the bail order or in any manner tempered with the evidence.

8. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a

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three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing require, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner(s) who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner(s) to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *GudikantiNarasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, **2018:INSC:107 [Para 7]**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. 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 v. State(NCT of Delhi)***2020:INSC:106 [Para 92]**, (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.

10. Without commenting on the case's merits, in the facts and circumstances peculiar

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to this case, and for the reasons mentioned above, the petitioner(s) 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.

11. In Madhu Tanwar v. State of Punjab, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

12. Given above, provided the petitioner(s) is not required in any other case, the petitioner(s) shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner(s) 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 OR the concerned Court, before whom the bonds are required to be furnished. When the bonds are to be furnished before a Judicial Magistrate, then in case of the non-availability of the concerned Judicial Magistrate, to any other nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). to hand over to the concerned investigator 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, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial

Magistrate’. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner(s) to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for a similar amount.

(c). Such court shall have a lien over the funds 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). The petitioner(s) 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 of this bail order.

(e). While furnishing personal bond, the petitioner(s) shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

13. The petitioner(s) shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner(s) shall join the investigation as and when called by the Investigating Officer or any Superior Officer; if still pending or join the proceedings before the trial Court in case report under Section 173 CrPC filed against him and also furnish bonds in the trial Court instead with the investigator and furnish bail bonds in terms of this order 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(s) 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.

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14. The petitioner(s) 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.

15. During the trial's pendency, if the petitioner(s) 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.

16. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide victim a sense of security. In *Mohammed Zubair v. State of NCT of Delhi*, **2022:INSC:735 [Para 28]**, 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."

17. Any Advocate for the petitioner(s) and the Officer in whose presence the petitioner(s) puts signatures on personal bonds shall explain all conditions of this bail order in any language that the petitioner(s) understands.

18. If the petitioner(s) 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(s) 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.

19. 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.

20. 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

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maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner(s) notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

21. 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.

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

23. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner(s) 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 is allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

05.12.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.