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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-15015-2023
Date of Decision: 29.04.2023**

Devesh @ Bhola

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Abhimanu, Advocate
for the petitioner.

Mr. Ram Kumar Singla, DAG, Haryana.

HARSH BUNGER J. (ORAL)

1. Petitioner has filed this petition under Section 482 Cr.P.C. seeking quashing of order dated 01.03.2023 (Annexure P-3), whereby an application moved by the petitioner (Devesh @ Bhola) seeking reduction of bail bonds has been dismissed by the Court of Additional Sessions Judge, Faridabad. A further prayer has also been made for modification of order dated 06.09.2022 (Annexure P-2), whereby the petitioner has been ordered to be released on bail on his furnishing bail bonds/surety bonds in the sum of Rs.50,000/- with one surety in the like amount; to the extent that the petitioner be released on bail on his filing personal bonds in FIR No.370, dated 25.06.2022, under Section 21(b) of the Narcotic Drugs and

Psychotropic Substances Act, at Police Station Mujesar, Faridabad (Haryana).

2. Upon issuance of notice, a reply by way of an affidavit of Surender Sheoran, HPS, Assistant Commissioner of Police, Crime, Faridabad, has been filed on behalf of respondent/State of Haryana, which is already on record.

3. Briefly, the petitioner is an accused in case FIR No.370, dated 25.06.2022, registered under Sections 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Mujesar, Faridabad (Haryana). The said FIR was lodged at the instance of Sub-Inspector Om Prakash, CIA, Sector 85, Faridabad. It is stated that a secret information was received that one boy namely Devesh @ Bhola (petitioner) was indulging in selling smack and he can be apprehended while he comes on his Scooty bearing No. HR-87F-9118 from Sector 58 towards Delhi Juice Corner. Finding the said information reliable, the necessary formalities were carried out and petitioner was apprehended. After carrying out search as per the procedure, intoxicating substance was recovered from the petitioner which was found to be 5.61 grams of *smack*.

The petitioner is stated to have been taken into judicial custody on 25.06.2022 and, thereafter, he applied for regular bail which came to be allowed vide order dated 06.09.2022 (Annexure P-2) by the Court of Additional Sessions Judge, Faridabad by observing as under:

“Therefore, without commenting anything on the merit of the case, the application stands allowed and the applicant-accused Devesh alias Bhola son of Sri Chand is allowed and he is ordered to be released on bail on his furnishing bail bonds

and surety bonds in the sum of Rs. 50,000/- with one surety in like amount to the satisfaction of this court/ Duty Judge Duty Magistrate/ Illaqa Magistrate. Copy of order be forwarded, if required. Bail application file be attached with main case file...”

It appears that subsequently, the petitioner herein filed an application before the Court of Additional Sessions Judge, Faridabad seeking reduction of the bail bonds on the ground that he belongs to a poor family and there is no earning member in his family, therefore, the amount be reduced. However, the learned Additional Sessions Judge, Faridabad vide order dated 01.03.2023 (Annexure P-3) dismissed the said application while observing as under:-

“4. In the present case, applicant has not come before court for reduction of bail amount required by police officer or by the Magistrate rather applicant has filed the present application for reduction of bail bonds in the order dated 6.9.2022 passed by this court. No document whatsoever is placed on the file by the applicant alongwith application that he belongs to a poor family and his family can not arrange amount.

5. In view of aforesaid discussion, in the considered opinion of this court, there is no merit in the application, accordingly same stands dismissed. Now file be put up on 19.5.2023 for recording of PWS.”

In the aforementioned circumstances, the present petition has been filed by the petitioner.

4. Learned counsel for the petitioner submits that the petitioner belongs to the poorest strata of the society and the parents of the petitioner have also died. It is submitted that the petitioner is around 20 years old, who

used to live with his sister and brother-in-law. It is stated that the sister of the petitioner is a housewife and her husband works as a driver and they also have two children to look after and the entire family lives in a slum area. Thus, the petitioner is unable to furnish the bail bonds/surety bonds in the sum of Rs.50,000/-. Learned counsel for the petitioner has contended that the Court of learned Additional Sessions Judge, Faridabad has erred in dismissing the application filed by the petitioner seeking reduction of the bail bonds in a mechanical manner and that too without considering the provisions contained under Section 440 of Cr.P.C., which reads as under:-

“440. Amount of bond and reduction thereof.

(1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.”

Accordingly, it has been prayed that the instant petition be allowed and the order dated 01.03.2023 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad be set aside and amount of bail bonds / surety bonds be reduced.

5. Per contra, learned State counsel has opposed the prayer made by the petitioner seeking reduction of the bail bonds by submitting that the petitioner has not filed any documents to show that he belongs to a poor family and that his family cannot arrange the amount. Accordingly, it is submitted that there is no merit in this petition and the order passed by the learned Additional Sessions Judge, Faridabad is legal and valid, which has been passed after considering all the facts and circumstances of the case.

Accordingly, prayer for dismissal of the petition has been made.

6. I have heard learned counsel for the parties and perused the paper book as well as the status report filed on behalf of the State of Haryana.

7. The issue concerning under trials being unable to furnish bail bonds/surety bonds due to poverty or some other reasons had come up for consideration before the Hon'ble Supreme Court of India in the case of **"In Re Policy Strategy for Grant of Bail, 2023(2) R.C.R. (Criminal) 121"**, wherein the following directions have been issued:-

"With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:

1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software (or any other software which is being used by the Prison Department].

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation

Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/ relaxation.

7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety." We order that the aforesaid directions shall be complied with.

8. In the instant case, it is noticed that the petitioner was granted bail vide order dated 06.09.2022, however, till date he is suffering incarceration despite the grant of bail, as he has not been able to furnish the bail bonds/surety bonds as ordered by the Court of Additional Sessions Judge, Faridabad. The petitioner has categorically averred in the petition that he belongs to the poorest strata of the society and his parents have expired and he is a young boy of 20 years of age who was living with his sister and brother-in-law, who also have their own family to support. It is also stated that the petitioner lives in a slum area and on account of his poor economic condition, he is not able to fulfill the condition of bail bonds/surety bonds for a sum of Rs.50,000/-. I am of the prima facie view that the poor financial condition of the petitioner can be gauged from the very fact that despite

grant of regular bail on 06.09.2022, the petitioner is still suffering incarceration as he has not been able to fulfill the condition of furnishing bail bonds and surety bonds in the sum of Rs. 50,000/- with one surety in like amount. Moreover, the parents of the petitioner are stated to have died and the petitioner has a sister, who is stated to be a housewife and her husband is stated to be a driver and they have their own family with two children to support. I do not see any reason to doubt the stand taken by the petitioner qua his poor financial condition.

9. Thus, considering the fact that despite grant of regular bail by the Court of Additional Sessions Judge, Faridabad on 06.09.2022, the petitioner is still suffering incarceration till date, I deem it just and appropriate to direct that *instead* of the condition of “*furnishing bail bonds and surety bonds in the sum of Rs. 50,000/- with one surety in like amount*”, there shall be a condition of “*furnishing bail bonds and surety bonds in the sum of Rs. 10,000/- with one surety in like amount*”. However, there shall also be additional condition(s) that the petitioner shall appear before the concerned Station House Officer/Police Station on first Monday of every month till the conclusion of the trial. At the time of release of petitioner, the concerned Station House Officer shall be informed and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith.

10. Accordingly, the order dated 01.03.2023 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad, is set aside and the order

dated 06.09.2022 (Annexure P-2) passed by the Court of Additional Sessions Judge, Faridabad, shall stand modified to the extent indicated above.

11. The petition is accordingly disposed of in aforesaid terms.

29.04.2023
Himani

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No