

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

CRM-M-15567-2023
Date of Decision: 28.03.2023

Joginder ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Kamal Chaudhary, Advocate for the petitioner.

Ms. Shubhra Singh, Addl. A.G., Haryana.

ANOOP CHITKARA, J.

Complaint No.	Dated	Sections	Titled
171	10.10.2022	21(1) of Mines and Minerals Act read with Rule 104(iii)	State through Mining Officer Vs. J S A Enterprises, through its proprietor Joginder

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. The accused could not be served through the ordinary process, including summons, bailable warrants, and even non-bailable warrants.
3. The nature of order this court proposes to pass, no response is required from the respondent.
4. The petitioner’s counsel contends that the non-appearance was unintentional, without any endeavor to delay the trial, and due to factors beyond the petitioner’s control. The petitioner explains that he did not know the date fixed for the case, not because of any disregard to law but due to lack of communication from counsel
5. The primary object of service is to secure the accused's presence in trial. The petitioner has approached this court on its own, establishing the bonafide at this stage. Without commenting on the case's merits, and in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the ends of justice would meet. Furthermore, without adjudicating on merit, given the explanation offered by the accused coupled with the facts and circumstances peculiar to this case, a balanced

approach would work as an incentive, a catalyst, speeding up the process, and bringing the guilty to Justice and Justice to the guilty. This court deems it appropriate to grant the following limited relief to the petitioner, subject to compliance with the conditions mentioned in this order.

6. 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.

7. The petitioner is directed to surrender before the concerned court **on or before 15.04.2023**. On appearance, the concerned court shall release the petitioner on bail on the same day, subject to furnishing bail in the following terms and imposing reasonable conditions, as it may deem appropriate in the background of the accused’s conduct.

8. 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 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.

9. The petitioner to execute a bond for attendance in the concerned court. On the reverse page of personal bonds, the petitioner shall mention the permanent address, along with the phone number preferably that number which is 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 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.

10. The order vide which non-bailable warrants were issued against the petitioner shall remain stayed qua the petitioner, till 15.04.2023. **It is clarified that if the petitioner fails to appear before the concerned court, then this order shall stand recalled automatically under section 362, read with 482 CrPC, without any further reference to this court.**

11. This order is subject to the petitioner(s) depositing a sum of rupees ten thousand, by the above-mentioned date, in the following account and hand over its receipt to the trial court.

Account Name - **HARYANA POLICE WELFARE FUND**
Account No. - 50100097073807
Account Type - Saving Account
Bank Name - HDFC Bank, Sector-8, Panchkula
IFSC Code - HDFC000108

12. It is clarified that till the time the petitioner(s) appear before the concerned court, they shall not visit any other place except the home, and in case they want to stay in another place, they shall intimate the address of the such place to the concerned SHO by e-mail, by attaching the copy of this order. In case of any violation on this account, this order shall stand recalled automatically without any further reference to this court.

13. 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.

14. *There would be no need for a certified copy of this order, 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 to the extent and subject to the conditions mentioned above. All pending applications, if any, stand disposed.

Trial be expedited.

(ANOOP CHITKARA)
JUDGE

28.03.2023

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.