

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-18611-2023****Date of Decision: April 17, 2023**

Shiv Shankar

.....Petitioner

Versus

U.T. Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sudesh Kumar Khurcha, Advocate for the petitioner.
Mr. Rajiv Vij, Addl. P.P., U.T. Chandigarh.

HARKESH MANUJA, J

By way of present petition filed under Section 482 Cr.P.C., prayer has been made to modify the order dated 22.03.2023, in FIR No-119 dated 28.09.2019 registered u/s- 279, 337, 338 of IPC and 3/181 of M.V. Act at P.S. Sector 19 Chandigarh, passed by the Additional Session Judge, Chandigarh so as to change the condition of bail order qua furnishing of local surety with immovable property situated in the jurisdiction of the Trial Court.

Briefly stated, the facts of the case are that an F.I.R No.19 dated 28.09.2019 U/S-279, 337, 338 of IPC and Section 3/181 of Motor Vehicles Act, 1988 was registered at P.S. Sector-19 Chandigarh, against the petitioner. Petitioner applied for bail in the Session Court and the same was allowed vide order dated 22.03.2023 on furnishing bail bonds in the sum of Rs. 25,000 with one surety of the like amount to the satisfaction of the Illaqa/ Duty magistrate. Petitioner is primarily aggrieved with the condition specified in the order regarding local surety which is reproduced as under:-

“The Court accepting the bonds is to ensure that the sureties furnished by the applicant are local one, having documentary proof of the sufficient immovable property of the value more than the surety amount within jurisdiction of the said Court. An endorsement be made on the title deed of the property that the said person stood as a surety for the applicant. A copy of that document be retained on the record of the Court. Photograph of the surety, applicant/accused and attesting witnesses be also obtained and placed on record.”

Petitioner subsequently filed the mercy application for reviewing the bail order dated 22.03.2022 with respect to the condition of local surety, but the same was dismissed.

Learned counsel for the petitioner submits that in peculiar case of petitioner, the condition specified by the learned Court is an onerous one, as petitioner is a resident of U.P. and his relatives who migrated from UP to Chandigarh, do not have any immovable property in Chandigarh. However, he submits that his relatives are having immovable property in SAS Nagar, Mohali and the petitioner can furnish the same as surety. He places reliance on **"Moti Ram and others Vs. State of Madhya Pradesh; (1978) 4 SCC 47"** to contend that the Trial Court /Magistrate or Court granting the bail should not impose the condition of furnishing the local surety as it is violative of Article 14 of the Constitution of India which protects all the citizens within the territory of India. He further places reliance on the judgment of Hon'ble Madras High Court in **"Uday Ranganatha Vs. State represented by The Inspector of Police, Hasanur Police Station, Erode District-638 401. (Cr.No.64 of 2021)"**

wherein Hon'ble Court modified the condition relating to production of local surety to that of surety from the State of Karnataka from which the petitioner/accused hailed.

Notice of motion.

Mr. Rajiv Vij, Addl. P.P., U.T. Chandigarh accepts notice on behalf of respondent U.T. Chandigarh and there is not much resistance by him regarding the prayer made by the petitioner except being apprehensive about the presence of petitioner during trial.

I have heard learned counsel for the parties and gone through the paper-book as well as case law cited at the Bar. Hon'ble Apex Court in **Moti Ram's** case (supra) was sympathetic to an approach for surety to be anywhere from India and relevant extract of the observations are reproduced below:-

"To add insult to injury, the magistrate has demanded sureties from his own district. (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamilian or Andhra to do if arrested for alleged misappropriation or them or criminal trespass in Bastar , Port Blair ,Port Blair . Pahalgam of Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha . Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non- regional linguistic, some times legalistic. applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes,

geographic, sometimes linguistic, sometimes legalistic. Art 14 protects all Indians qua Indians, within the territory of India. Art 350 sanctions representation to any authority. including a court, for redress of grievances in any language used in the Union of India . Equality before the law implies that even a vakalat 6-526 SCI/78 or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff.”

Even otherwise, the purpose of putting restrictions while granting bail is to secure the presence of accused during Trial and not to create impractical hindrance in his release. Hon’ble Apex Court in recent case titled as **“IN RE POLICY STRATEGY FOR GRANT OF BAIL”** reported as 2023(2) R.C.R.(Criminal) 121, held as under:

- “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.”*

Therefore, once even the Hon’ble Apex Court has observed that the condition related to local surety shall not be insisted upon and

further if the accused is not able to fulfill the condition of release within a month, then the *concerned Court* shall suo moto consider the relaxing of such condition. Additionally, in view of this judgment, not only this Court while exercising its power u/s 482 Cr.P.C., but even other Courts including Session/ Magistrate Courts are empowered to modify the bail conditions if parameters, as specified in the case, are satisfied.

In view of the discussion made hereinabove as well as the authorities cited above, prayer made in the present petition is allowed and the condition relating to production of local surety from “within the jurisdiction of the said Court” is dispensed with and the impugned part shall be replaced as here under:

“The Court accepting the bonds is to ensure that the sureties furnished by the applicant have documentary proof of the sufficient immovable property of the value more than the surety amount. An endorsement be made on the title deed of the property that the said person stood as a surety for the applicant. A copy of that document be retained on the record of the Court. Photograph of the surety, applicant/accused and attesting witnesses be also obtained and placed on record.”

Except the aforesaid modification, the order passed by the learned Session Court in all other aspects stands unaltered.

Disposed off accordingly.

April 17, 2023
sanjay

[HARKESH MANUJA]
JUDGE

Whether speaking/reasoned	yes/no
Whether reportable?	yes/no