

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-21528-2023 (O&M)

Date of order: 06.07.2023

Rajni Pandey

... Petitioner(s)

Versus

State of UT, Chandigarh

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Pradeep Sharma, Advocate
for the petitioner(s).

Mr. Abhinav Gupta, APP, UT, Chandigarh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
196	27.07.2021	Sector 39, Chandigarh	409, 420, 467, 468, 471, 120-B IPC

1. The petitioner, incarcerating upon her arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 12 of the bail application, the accused declares her criminal antecedents, further details of which have also been furnished in the custody certificate, which read as under:

Sr. No.	FIR/Complaint No.	Date	Offences	Police Station
1.	29	11.4.2022	377, 511, 34 IPC and Sections 8 & 12 POCSO Act	Sector 49, Chandigarh
2.	NACT/8707/2021		138 NI Act	

3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. While opposing bail, the State contends that given the criminal past, the accused

is likely to indulge in crime once released on bail.

REASONING:

5. In Maulana Mohd Amir Rashadi v. State of U.P., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

"[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

6. In Paramjeet Singh v. State of Punjab, **2022:PHHC:003983 [Para 8]**, CRM-M 50243 of 2021, this court observed,

"While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles."

7. As per custody certificate dated 6-7-23, the petitioner is in custody in this FIR for one year and two months. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the *prima facie* analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail.

8. In Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, Supreme Court holds,

"[28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their

presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

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 elaborate 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.

10. 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.

11. In *Madhu Tanwar and Anr. 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 is not required in any other case, she 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/court, and in case of non-availability, to any nearest Ilqa 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). Petitioner to hand over to the concerned investigator/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, 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 to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the 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 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 petitioners/applicants shall mention the following personal identification details:

1.	AADHAR number [In case of the residents of India]	
2.	Passport number [In case of foreign nationals]	
3.	Passport number of an Indian citizen, (If available), when the attesting officer/court deems appropriate or considers the accused as a flight risk.	
4.	Mobile number (If available)	
5.	E-Mail id (If available)	

13. The petitioner 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.

14. Within fifteen days from release from the prison, the petitioner shall forward on separate notarized affidavits, 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. In that case, 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.***

15. During the trial's pendency, if the petitioner 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 tries to reform, does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. 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.". 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 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.
18. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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.
19. 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.
20. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
21. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, without any delay. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.
22. *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

July 06, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No