

207

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

CRM-M-23610-2023

Reserved on: 16-05-2023

Pronounced on: 22-05-2023

Wan Chenghua

...Petitioner

Versus

State of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Harish Bhatti, Advocate for the petitioner.

Mr. Deepinder Brar, Addl. PP. UT, Chandigarh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
33	03.09.2022	Cyber Crime Chandigarh	384, 420, 468, 471, 509, 120-B IPC (Sections 66-D, 67 of Information technology Act, 2000 and Section 14 of The Foreigners act, 1946 added later on)

1. The petitioner incarcerated in the FIR captioned above, on the allegations of involvement in duping and threatening the gullible people through the *Hugo Loan app* and transferring money to overseas accounts, has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 15 of the bail petition, the accused declares that he has no criminal antecedents.

3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. The Union Territory of Chandigarh opposes bail and submits that the petitioner is a flight risk.

5. The complainant informed the police that he had received an SMS on his mobile number containing a URL link and as soon as he clicked on it, Hugo's loan application was installed. The application sought permission to access all his contacts and gallery on the cell and the complainant granted the permission, thinking it was routine for such mobile-based Apps to do so during installations. Subsequently, he checked his eligibility for a loan

on the Hugo loan app and filled in all his details. The application showed that he was eligible for Rs.3500/-loan. However, the complainant did not apply for a loan. Later, he received threatening calls and SMS on WhatsApp through mobile numbers +37125218379, +6283146262636, and +919910429137, demanding money and intimidating him that they have downloaded photos from his phone's gallery, and started sending to him, his and his family members morphed photos, and proclaimed that they would be sending these obscene pictures to all his contacts. Feeling scared, he transferred Rs.2045/- on 24.08.2022 and Rs. 3500/- on 30.08.2022, but the accused continued to threaten him and demanded more money.

6. The modus operandi was that cyber-thugs were running mobile phone based scam through an app named 'Hugo Loan.' The *modus operandi* was sending messages to entice needy people to take out easy quick loans. Once downloaded, the App required filling in personal details to check their eligibility for such loans. While downloading the application, the app also sought access to the contacts and gallery, which the people granted. The application would then show eligibility for a meager loan amount. Many targets would not pursue owing to the low amount. However, in the meantime, the application downloaded all the contacts and photographs from their phone gallery to their server. The cyber-thugs then made repeated calls to extort money threatening the targets that they would leak out morphed or intimate pictures of them and their family. Due to fear and insignificant monetary loss viz-a-viz reputation, the victims obliged and several of them did not contemplate taking legal action. Cumulatively, the thugs ended up with a sizeable chunk.

7. In this regard, the police conducted a detailed enquiry and arrested the present petitioner and a large number of accused. It would be appropriate to refer to the status report that was filed in one of the bail petitions, by a co-accused. The relevant parts read as under: -

"During the course of investigation, CAF and CDR of alleged mobile number 7015153485 obtained, from the scrutiny of CDR, on 05.09.2022 the accused namely (1) Gyandeep 5/044 Sukhbir, VillBokha, PS Khal, Distt. Rewari, Haryana, age 20 years, (2) Ashish Kumar Tanwar S/o Pappu Singh, Village Buchawas, Distt. Mohindergarh, Haryana, Age 21 years (3) Hemant Kumar S/o Dalip Kumar, # D-95 Ambedkar Colony, Bijwasan, New Delhi, Age 20 years, (4) SauravJha S/o Mahesh Jha, # 642, Bijwasan, PS Kapashera, South West Delhi, Age 22 Years, (5) ManvenderRaghav S/o Sushil Kumar, #43 Jindal Colony, SamalkhaExtn, PS Kapashera, South West Delhi, Age 23 years, (6) Deepak Chand S/o Parkash Chand, # 134, St No. 6, Near BSES Office, Village Kapashera, South West Delhi, age 23 years were arrested, Further, on the discloser statement of accused Hemant, two more accused, Sidarth @ Manish Rai and Sandeep S/o ArshiParsad Yadav, # 56/B AmbedkarColoney, Bijwasan South West, PS - Kapashera Delhi, Age 23 Years were arrested on 07.09.2022. During interogation, they disclosed that some other persons namely

Lekhraj, Arjun Sain, SonuBhadana, @ JituBhadana @ ParwejAlam are their boss and (Peter, Tray, Nicholas) are their top bosses, who use to transfer the amount through different UPI's in victims accounts as loan amount and after that blackmail them for money as they hack their data (Contacts, Gallery) and use to take money from victims through UPI and transfer the same in different accounts which are not on their names and Arjun Sain, Lekhraj, ParwejAlam are known about these accounts. Further on date 11.09.2022 accused Lekhraj and Arjun Sain were arrested. On date 10.09.2022 accused ParwejAlam @ SonuBhadana @JituBhadana S/o Jan Mohamad R/o HasibFatkal Toll, PS Ratu, Distt Ranchi, Jharkhand, age 33 years was arrested from Ranchi, Jharkhand. On the discloser statement of accused ParwejAlam @ SonuBhadana @JituBhadana one more accused namely Anshul Kumar S/o Ram Naresh Kushwaha R/o New By Pass, Near Flyover, Tulsi Ada, Etawah, UP, C/o Rajiv Chauhan Village - Barola, Sector 49, Noida, UP, Age 25 Years was arrested from near ATS Paradise, Greater Noida, U.P. who disclosed that he used to take payment from Wan Chengua, Jeffery Jhu, Nicolas @ Tray, Thanguva and delivered the same to ParwejAlam and Jeffery Jhu, Nicolas @ Tray, Thanguva are operating loan apps from China and ParwejAlam operate in India and he delivers the payment after confirmation from both sides. He further disclosed that he has collected the payment Rs.1131000/- from Wan Chengua, who is residing in ATS Tower, Noida, U.P. Further on 11.09.2022 on the disclosure and identification of accused Anshul Kumar raid was conducted at Flat No. 9061, Tower No.9, ATS Paradise, Greater Noida, U.P. and a person was present there whom Anshul Kumar identified that he is Chinese person, whom he has to collect the Rs.1131000/- and deliver to ParwejAlam, after that Chinese person named Wan Chengua was arrested and an amount Rs.1131000/- was recovered from him. On 30.8.2022 Rs.3500/- was transferred in Punjab: National Bank A/c No.1497002100027072 of Jodhpur, Rajasthan by complainant through UPI, and record from PNB obtained and it has been found that cheated money and other amount came in said account through UPI transactions and further transferred to Yes Bank A/c No.020883300000343 of Sector 62, Noida. The record from the Yes bank also obtained and account was found in the name of M/s Malista Freight Forwarding Ituhum Tower, 11" floor, Sector 62, Noida, U.P. and from the scrutiny of bank statement it was found that amount from this account further transfer in multiple accounts through RTGS, IMPS, UPI. The amount was transferred from main PNB A/c No.1497002100027072 to Yes Bank A/c No.020883300000343 of Malista Freight Forwarding and from Malista account the amount was transferred to Shri Balaji Enterprises Yes Bank A/c No.023963300001636. Further from Shribalaji enterprises amount was transferred to Satyam Enterprises A/c No.10093978191 IDFC Bank.

(3). That further, during investigation on 18.9.2022 present petitioner/accused Sunil Kumar Chauhan was arrested. The petitioner/accused used to manage the account of Satyam Enterprises A/c No.10093978191 IDFC Bank, in which cheated amount was transferred in bulk transactions in the month of August 2022. A mobile having number 8377859521 has been recovered from the possession of the accused/petitioner.

(4). That, on submitting the electronic gadgets data and details of alleged Bank account used for cheating, with 14C (Integrated Cyber Crime Coordination Centre) portal, maintained by the ministry of Home affairs, It came to notice that said data got linkage with more

than 1575 complainants and 89 FIR of cheating across the country. On the basis of these linkages, two of the arrested Arjun Sein and Parwejalam had been taken away by the Tamilnadu police on the production warrant.

(5). That, Due to the involvement of huge amount in cheating and has been in circulation in the bank accounts of shell/fake companies and firms, Chandigarh police has written to the ED to take up the matter at their end on aspects of money laundering.

(6). That, it is a part of the wider nexus of money laundering and hawala transfers of 100s of crores of rupees to China by way of series of transactions through mule accounts of shell companies."

8. The accused found system and human vulnerabilities and, with the help of his Indian agents, took advantage of significant loopholes. It is for the government to take appropriate measures empathizing the people's suffering and magnitude of this problem that the people not only of India but worldwide are facing and the global tarnishing of India's image by these cyber-thugs. However, keeping the people in jail for an indefinite period is not a panacea and the Court has to give regard to an upper limit for pre-trial custody.

9. As per paragraph 5 of the bail petition, the petitioner has been in custody since Sep 11, 2022. Almost all his co-accused, with lesser custody, stand released on bail. Given the penal provisions invoked viz-a-viz pre-trial custody of more than eight months, coupled with the quality of evidence, the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability of further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

10. 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.

11. 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**, [2020:INSC:106], (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

12. 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.

13. The petitioner has averred that he is a permanent resident of the People's Republic of China with no relatives or community in India. If any stock surety is accepted, it would merely be a formality because if he fails to appear, then in such a situation, the procured surety would not be able to produce the petitioner to attend the trial or suffer the punishment if such a stage arises. In this background, the following legal propositions need deliberation:

- a). Once any accused is released on bail, how can it be ensured that they will face trial, and if they stop appearing before the trial court, their presence can still be procured?
- b). Can a stock surety produce them before the trial court to attend it?
- c). Whether, in every case, as an alternative to furnishing surety, the accused be permitted on their request to either give a bank guarantee, block their account to the extent of surety, or electronically transfer the bond money in the account of the Court, or handover a fixed deposit made in favor of the Court?

14. 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 shall be incurred to trace him, shall be recovered from such person, and all the State shall have a lien over their assets to make good the loss.

15. It is beyond cavil that the sole purpose of a surety bond is to ensure that whenever an accused evades attending the trial, their surety produces them before the court. The menace of securing sureties by payment is well known within the legal fraternity. Some unscrupulous elements have established a flourishing business by standing as surety, and they circumvent the steps taken and all the measures formulated to end the menace of stock sureties by taking advantage of the vulnerabilities in the system. There is no reliable data to establish the role of sureties in bringing fugitives to justice, and the ground reality is that the sureties are happier to be compensated by the accused for their financial losses caused according to an action under section 446 CrPC.

16. Bail is a promise by the accused to the Court to attend the trial and comply with the conditions stipulated in the order. The accused accepts such a contract by furnishing bail bonds, and so do their sureties, undertaking to produce the accused before the concerned Court if they default to appear. Section 74 of the Indian Contract Act, 1972, provides compensation for breach of contract where a penalty is stipulated. The perfect insight is its illustration (c), which reads, “A’ gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.”

17. Analysis of law on financial securities in lieu of human sureties:

- (a). In Pillappan @ Ravikumar v. State, 2018 LawSuit (Mad) 1475, Madras High Court observed,
[15]. By virtue of Sec. 89 of the Code, the Court records the absence of the accused and issues a warrant to secure his presence. By his non appearance followed up with the act of the Court in issuing the non-bailable warrant for securing his presence, the accused has prima facie breached the condition of the bond. A bond is a contract between the accused and the State under which the accused has agreed to appear before the Court on the hearing dates and his sureties have assured the Court that they will ensure that the accused does not commit breach of the bond.”
- (b). In HussainaraKhatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81, a three-member bench of Supreme Court holds,
[4]. ... If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused his previous record and the nature and circumstances of the offence, there may be a substantial risk of his non-appearance at the trial, as for example, where the accused is a notorious bad character or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the court may not release the accused on his personal bond and may insist on bail with sureties....
- (c). In Moti Ram v. State of M.P., (1978) 4 SCC 47, Supreme Court, after referring to the provision for suspension of sentence of those convicted by trial Courts, holds,
[27]. The slippery aspect is dispelled when we understand the import of Section 389 (1) which reads:
389 (1): Pending any appeal by a convicted person the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.
The Court of appeal may release a convict on his own bond without sureties. Surely, it cannot be that an under-trial is worse off than a convict or that the power of the court to release increases when the guilt is established. It is not the court's status but the applicant's guilt status that is germane. That a guilty man may claim *judicial liberation pro tempore without sureties* while an under-trial cannot is a *reductio ad absurdum*.

18. Judicial precedents on s. 445 CrPC:

- (a). In *Rajballam Singh v. Emperor*, AIR 1943 Patna 375, Patna High Court observed:-
 “[2]. In this particular case and in others the District Magistrate has demanded a cash deposit as a condition to the release of the accused. That is not what the law contemplates or authorises.”
- (b). In *R. R. Chari v. Emperor*, 1948 AIR(All) 238, Allahabad High Court observed,
 [4]. The language of S. 499, Criminal P.C. makes it perfectly clear that what that section contemplates is the furnishing of a personal bond by the accused person and a bond by one or more sufficient sureties. The accused as well as the sureties have, therefore, to execute only bonds which are sufficient in the mind of the amount which he might have fixed. This is also the view taken by the Patna High Court in 1943 AIR(Pat) 375 and I respectfully agree with it. Section 513 provides for a concession to an accused person who is unable to produce sureties. That section also makes it clear that the Magistrate is not bound to accept cash, but may permit an accused person to deposit a sum of money in lieu of executing a personal and giving surety of some persons. That section, however, does not authorise a demand of cash by a Magistrate. Under these circumstances, even though an offer may have been made in this case by the counsel for the applicant, that offer was made after the Magistrate apparently had made up his mind to demand cash security. It will not be covered by the terms of S. 513, Criminal P.C. and the demand of cash security in this case was clearly illegal.”
- (c). In *Niamat Khan v. Crown*, 1949 LawSuit (Nag) 42, High Court of Nagpur observed,
 [4]. ... Even under Section 513, Criminal P.C (1898) the accused could only be asked to deposit the amount of security instead of executing a bond. This provision is meant for the benefit of the person who is required to execute a bond in case where he may not be able to find a surety....
- (d). In *State of Mysore v. H VenkataramaKotaiyah*, 1968 CrLJ 696, Mysore High Court observed,
 [4]. Section 513, Criminal P.C. states that when any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer, may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond. According to this section, if the accused wants to deposit any sum of money, it is open to the Court to accept the same. But the law does not empower the Court to insist on cash deposit to be made by the accused.
- (e). In *Krishna Kumar and others v. State of Karnataka*, 1979 SCC OnLineKar 118, [3]. It is also clear that on the Court requiring a person to execute a personal bond with sureties or without sureties, it is at the option of the accused persons to furnish cash deposit in lieu of the bond or sureties that the Court may make an order under Section 445. In the instant case, it is clear from the orders that the learned Magistrate

has asked for securities in all the forms available under both the sections which is impermissible.

(f). In *Gokul Das v. The State of Assam*, 1981 CrLJ 229, Gauhati High Court observed,

[14]. From the relevant provisions of the Criminal Procedure Code, there is no doubt that cash deposit in lieu of execution of a bond by the accused is an alternative system of granting bail and can be stated to be no less efficacious than granting bail of certain amount with or without surety or sureties of the like amount.

(g). In *Afsar Khan v. State by Girinagar Police, Bangalore*, 1992 Cr.LJ 1676, Karnataka High Court observed,

[7]. A reading of the entire Chapter which deals with the provisions relating to bail, does not say that when a person is released on bail, the Court can also insist upon him to give cash security. After all, the object of granting bail is to see that the liberty of an individual is extended. Of course, when an accusation is made against a person, in the event of his release, it is the duty of the Court to see that the interest of the State and the public is safeguarded. For that purpose, the Court is empowered to insist upon appearance of the accused whenever so required either by the Police or Court either for investigation or to take up trial. During this period the Court can also warn the accused of his activities or movements in any way causing a fear or resulting in tampering with the prosecution evidence. While the Court exercises its discretion, whether it is under S. 437 or 438 or 439, it shall exercise the same properly and not in an arbitrary manner. The discretion exercised shall appear a just and reasonable one. It is true that no norms are prescribed to exercise the discretion. Merely because, norms are not prescribed for the Court to exercise discretion under Ss. 437, 438 or 439 that does not mean the discretion shall be left to the whims of the Court. Guiding principle shall be as indicated earlier with sound reasoning and in no way opposed to any other law. The Legislature has given this discretion to the Court keeping full faith in the system of administration of justice. While administering justice; it is the duty of the Court to see that any order to be passed or conditions to be imposed shall always be in the interest of both the accused and the State. The conditions shall not be capricious. On the other hand, it shall be in the aid of giving effect to the very object behind the discretion.

(h). In *Parades Patra v. State of Orissa*, 1994 (1) Crimes (HC) 109 Orissa High Court observed:

[10]. ...From this it can be reasonably inferred that it is not the mandate of the Code that the Magistrate should insist on cash security additional to personal bond with or without sureties.

(i). In *Charles Shobhraj v. State*, 1996 (63) DLT 91, Delhi High Court observed,

[6]. But then, all said and done, a few things need to be noticed. The object of requiring an accused to give security for his appearance in Court is not to secure the payment of money to the State, for that is a secondary consideration, but to secure the presence of a person facing trial. Thus the primary consideration is the personal element of the surety or sureties concerned as the Court expects the surety to see that the accused appears on the date fixed and also that the surety will take steps for getting the accused arrested in case of any attempt on the part of the accused to abscond or to avoid attendance in Court. As observed by Alvorstone, Lord Chief Justice of England in

King v. Porter, (1910) 1 KB 369, it is to the interest of the public that criminals should be brought to justice, and therefore that it should be made as difficult as possible for a criminal to abscond. Responsibility is fixed on the sureties to see that such a person does not escape. A duty is thus cast on the Court, in accepting or rejecting a surety, to see the sureties are solvent and persons of sufficient vigilance to secure the appearance and prevent the absconding of the accused.

[7]. The principal purpose of bail being to secure that the accused person will return for trial if he is released after arrest, this consideration is not lost sight of in the provisions of section 445 of the Code. It is only an enabling section, and provides that a Court or officer may permit a person to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing a bond except in cases where the bond is for good behaviour. Surely, we cannot and must not lose sight of the word "may" which indicates that accepting the deposit of money in lieu of surety is left to the discretion of the Court and that consequently the acceptance of deposit of money is not obligatory and the relief is to be granted only where the Court thinks fit to substitute a cash security. While considering the question of fitness, principal purpose of bail as underlined above, would always remain a paramount consideration. In short thus besides the question as to whether the accused can find sureties or not, the Court shall have to keep in mind the question as to whether the prisoner is likely to abscond or not and while meditating on the last question the Court may take into account various factors concerning him like the nature and circumstances of the offence charged, the weight of the evidence against him, length of his residence in the community, his family ties, employment, financial resources, character and mental condition, his record of convictions, reputation, character and his records of appearance at Court proceedings or flight to avoid prosecution or failure to appear at Court proceedings.

- (j). In Alluvdin v. Inspector of Police, 2001 CrLJ 2672, Madras High Court observed, [3]. Section 441 Cr.P.C. reads that before any person is released on bail or released on his own bond, a bond for such sum of money as the Court thinks sufficient shall be executed by such person. Section 441 does not speak about deposit of any cash security. Only in certain contingencies, where the accused is unable to secure sureties for his release, he is permitted to deposit a sum of money or Government promissory Note as the Court may fix in lieu of executing such bond, under Section 445, Cr.P.C.
- (k). In Shokhista v. State, 2005 LawSuit (Del) 1316, Delhi High Court observed, [5]. ...The accused is a foreign national and is not able to furnish a local surety. The same does not debar her from being admitted to bail. The provision of local surety is nowhere mentioned in the Code of Criminal Procedure and surety can be from any part of the country or without. In the present case, since the accused is a foreign national and is facing investigation under Sections 4, 5 and 8 of the I. T. P. Act and in view of the fact that the Petitioner is ready and willing to make a deposit in cash in lieu of the surety in addition to a personal bond, I am of the opinion that the ends of justice would be met in permitting her to do so. Consequently, I admit the Petitioner to bail on her furnishing a personal bond in the sum of Rs. 20,000/- and a cash deposit of the like amount in lieu of the surety to the satisfaction of the Trial Court. The Petitioner shall not leave the country without prior permission of the trial court and shall deposit her pass-port with

the trial court.

- (l). In *Srinjay Kumar Singh v. State of Nagaland*, 2007(32) R.C.R.(Criminal) 516, Kohima Bench of Gauhati High Court observed,
 [4]. After hearing the counsel for the parties at length and upon perusal of the bail order dated 28.2.07, I am of the considered opinion that the rider to furnish surety from a permanent resident of Dimapur having immovable properties is too harsh as the accused is not a resident of Dimapur and it is not possible for him to obtain such a surety being a resident of Chittaranjan in the District of Burdwan, West Bengal and also the rider to furnish local surety is tended to defeat the very order of bail.
 [5]. The learned Counsel for the petitioner has relied upon the decisions of the Apex Court as, in the case of *AIR 1978 Supreme Court 1594, Moti Ram and Ors. v. State of Madhya Pradesh* as well as the decision of the Hon'ble Gauhati High Court in the case of *Amit Kr. Jain v. State of Nagaland as reported in (2005) 2 GLT 161*.
 [6]. Considering the decisions rendered by the Apex Court and also on this Court, I am of the considered opinion that the order granting bail dated 28.2.07 needs to be modified to the extent that instead of furnishing surety from a permanent resident of Dimapur having immovable properties, the accused be allowed to deposit cash surety or bank surety to such an amount as may deem fit and proper and to the satisfaction of the ADC (J), Dimapur, as provided under Section 445 Cr.P.C. It is also directed that the Court below while passing fresh modified order of bail dated 28.2.07 shall also impose condition that the accused shall report once a week before the Deputy Residential Commissioner, Nagaland House, Kolkata and upon reporting, the DRC, Nagaland House, Kolkata shall submit a report to the Superintendent of Police, Dimapur.
- (m). In *Maha Ahmad Yusuf v. State of U.P.*, 2015 (5) R.C.R.(Criminal) 13, Allahabad High Court observed,
 [6].....The cash deposit is equally efficacious as other system in view of Section 445 Cr.P.C.
- (n). In *Sakthivel v. The State*, Crl.O.P.No.835 of 2015, Madras High Court observed,
 [15]. Either under Section 438, or under Section 437, 439 of Cr.P.C., it is not that the Courts have no power to impose such bail condition. But the condition should not be imposed for the sake of imposing condition. It must have some objective. It must be reasonable. It should not be oppressive in nature. It should be performable, executable. In imposing condition, the Court must take into account the individual's position, financial capacity and his role in the case.
- (o). In *Navaneetha Krishnan v. State*, (2) MadWN (Cri) 53, Madras High Court observed,
 [17]. While granting bail, the Court can direct the accused to execute bail bond. As per Section 440 Cr.P.C., 1973 the bond amount should not be excessive. When a person so directed to execute the bond either with surety or without surety is not able to furnish the sureties, then under Section 445 Cr.P.C., 1973 he has the option to offer cash security. But even then, it must be a reasonable amount. It should not be an arbitrary, excessive amount. It should not be in the nature of deprivation of grant of bail by fixing a heavy amount as surety amount. If heavy amount is directed to be deposited as cash security, the bailee/accused will not be in a position to comply it. If heavy amount is demanded from the surety, then the bailor will not be

forthcoming. And 'haves' will go out, while 'have nots' will remain in jail.

[18]. Reading sections 440, 441 and 445Cr.P.C., 1973 together, it is clear that straightaway a Court cannot direct the accused to deposit cash security. First of all, the Court has to direct execution of bail bond by the sureties in case if the release is not on his own bond. Only in lieu of that deposit of cash security could be directed (see Section 445Cr.P.C., 1973). Thus, the Court cannot straightaway direct the accused to deposit cash security.

- (p). In *Sagayam @ Devasagayam v. State*, 2017(3) MLJ (Cri) 134, Madras High Court observed,

[40]. Under the Code, there is provision for offering Cash surety (See Section 445Cr.P.C.). Even in fixing the cash surety, the amount should not be excessive. (See Section 440(1) Cr.P.C.). In the first instance, Court cannot demand Cash surety from the accused. The offer to make cash surety must come from the accused.

- (q). In *Endua @ Manoj Moharana v. State*, 2018(72) Orissa Cri. R.611, Orissa High Court observed,

[9]. The discretionary power exercised by the Magistrate or the Court, as the case may be, under sections 441 Cr.P.C., 1973 and 445 Cr.P.C., is mutually exclusive and not concurrent. On the Court requiring a person to execute a personal bond with sureties or without sureties, it is at the option of the accused to furnish cash deposit in lieu of executing such bond that the Court may make an order under section 445 of Cr.P.C., 1973

[10]. The order of bail should not be harsh and oppressive which would indirectly cause denial of bail thus depriving the person's individual liberty. While granting bail, insisting on good behaviour or prompt attendance, executing personal bond, further to safeguard his good behaviour and personal attendance may be supported by insisting upon additional sureties as the Court deems fit but insisting upon cash security is incorrect and indirectly results in denial of bail. The entire chapter of Cr.P.C. which deals with the provisions relating to bail nowhere says that when a person is released on bail, the Court can also insist upon him to give cash security. The power has to be exercised in a proper and judicious manner and not in an arbitrary, capricious or whimsical manner and the discretion exercised shall appear to be just and reasonable one. It is the duty of the Court to see that any order to be passed or conditions to be imposed while granting bail shall always be in the interest of both the accused and the State.

- (r). In **Ubaidulla v. State of Kerala, [2020:KER:27721, PARA 5]**, (Crl. MC. No. 3400 of 2020, decided on 5-8-2020), Kerala High Court observed,

(5).I find merit in the submissions made by the learned counsel for the petitioner. The very purpose of Section 445 Cr.P.C., 1973 providing for deposit instead of recognizance, is to ensure that a person is not denied an opportunity to be enlarged on bail merely for the reason that he is unable to execute bond, with or without sureties. Section 445 Cr.P.C , 1973 provides for deposit of a sum of money or Government Promissory Note to such amount as the Court may fix in lieu of executing the bond.

- (s). In *Yan Hao v. State of Telangana*, (Criminal Petition No. 1966 of 2021, decided on 23.3.2021), Telangana High Court permitted a Chinese national to furnish two cash sureties of Rs.10,000/- each apart from a personal bond amount of

similar amount.

- (t). In *David Morrison v. State of Uttarakhand*, 2021 (1) Crimes 230, Uttarakhand High Court permitted to deposit the cash amount.
- (u). In *Abhishek Kumar Singh v. State of Himachal Pradesh*, 2020 SCC Online HP 3296, the High Court of Himachal Pradesh analyzed the scope of furnishing fixed deposits in place of cash while granting bail under S. 439 CrPC to the accused with an option to give a fixed deposit in place of surety. In *Manish Lal Srivastava v. State of Himachal Pradesh*, CrMP(M) 1734 of 2020, ICL 2020 (12) HP 496, the scope of deposits was analyzed under S. 438 CrPC. In **Mahidul Sheikh v. State of Haryana**, [2022:PHHC:003277, Para 53], [Law Finder Doc Id # 1933969], this Court observed 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.

19. From the survey of the judicial precedents mentioned above, the following fundamental principles of law relating to the choice of the accused to furnish surety bonds or secure recognizance by depositing a sum of money or Government promissory notes emerge:

- (a). The object of requiring an accused to give security for his appearance in Court is not to secure the payment of money to the State. The principal purpose of bail is to secure that the accused person will return for trial if he is released after arrest; this consideration is not lost sight of in the provisions of section 445 of the Code. [*Charles Shobhraj v. State*, 1996 (63) DLT 91, Para 6 & 7].
- (b). The rider to furnish local surety is tended to defeat the very order of bail. [*Srinjay Kumar Singh v. State of Nagaland*, 2007(32) R.C.R.(Criminal) 516, Para 4].
- (c). The discretionary power exercised by the Magistrate or the Court, as the case may be, under sections 441 CrPC, 1973 and 445 CrPC, is mutually exclusive and not concurrent. [*Endua @ Manoj Moharana v. State*, 2018(72) Orissa Cri. R.611, Para 9].
- (d). A reading of the entire chapter, which deals with the provisions relating to bail, does not say that when a person is released on bail, the Court can also insist upon him to give cash security. [*Afsar Khan v. State by Girinagar Police, Bangalore*, 1992 Cr.LJ 1676 (7), Para 7].
- (e). The Court cannot demand a cash deposit as a condition of bail. [*Rajballam Singh v. Emperor*, AIR 1943 Patna 375, Para 2].
- (f). The offer to make cash surety must come from the accused. [*Sagayam @ Devasagayam v. State*, 2017(3) MLJ (Cri) 134, Para 40].
- (g). If the accused wants to deposit any sum of money, it is open to the Court to accept the same. [*State of Mysore v. H VenkataramaKotaiyah*, 1968 CrLJ 696, Para 4].
- (h). The Magistrate is not bound to accept cash but may permit an accused person to deposit a sum of money. [*R. R. Chari v. Emperor*, 1948 AIR(All) 238, Para 4].

(i). Cash deposit instead of execution of a bond by the accused is an alternative system of granting bail and can be stated to be no less efficacious than granting bail of a certain amount with or without surety or sureties of the like amount. [Gokul Das v. The State of Assam, 1981 CrLJ 229, Para 14].

(j). The cash deposit is equally efficacious as other systems because of Section 445 CrPC. [Maha Ahmad Yusuf v. State of U.P., 2015 (5) R.C.R.(Criminal) 13, Para 6].

(k). This provision is meant to benefit the person who is required to execute a bond in a case where he may not be able to find a surety. [Niamat Khan v. Crown, 1949 LawSuit (Nag) 42, Para 4].

(l). The foreign national accused who cannot furnish a local surety is not debarred from being admitted to bail. [Shokhista v. State, 2005 LawSuit (Del) 1316, Para 5].

(m). It is not the mandate of the Code that the Magistrate should insist on cash security additional to personal bond with or without sureties. [Parades Patra v. State of Orissa, 1994 (1) Crimes (HC) 109, Para 10].

20. In Sajal Kumar Mitra v. State of Maharastra, 2011 CrLJ 2744, High Court of Bombay observed,

[10]. In my view, the learned Magistrates have power to release the accused on bail initially on furnishing cash bail and, thereafter, asking him to furnish solvent sureties in appropriate cases.

21. Section 445 CrPC mandates an accused to execute bonds by officers and Courts, with or without sureties. An officer directs an accused to execute bonds only when the Court issues Bailable Warrants or when such officer arrests an accused in a bailable offence, or arrests in a non-bailable offence and when such an accused is armed with an order of anticipatory bail. Section 445 CrPC further provides that the court or such officer may permit the accused to deposit a sum of money or Government promissory notes of such amount, instead of executing such bond. Thus, for S. 445 CrPC, the Legislature does not distinguish Officers from Courts. Further, even the legislature had made fleeing from justice a penal offense under section 174-A of IPC.

22. In anticipatory bail, the surety bail bonds have to be to the satisfaction of the Investigator/Arresting Officer, and the financial instruments for security must be drawn up in the name of the concerned Chief Judicial Magistrate. In regular bail and suspension of sentence applications, the surety bonds must satisfy the said court, the trial court, or the available Ilaqua Magistrate. In appeals and revisions, the higher Courts ask a convict or an accused to furnish bonds under sections 389, 390, and 397 CrPC. The provisions contained in Chapter XXXIII of CrPC apply to all bails and bonds. Thus, S. 445 CrPC applies to all bails, including those granted under sections 389, 390, 397, 436, 437, 438, and 439 CrPC. The similarity between Sections 436 to 439 of the CrPC is that all these relate to bail, whether by an officer empowered to release on bail in bailable offenses or release under bail

granted by Courts. Furthermore, S. 445 CrPC provides for depositing a sum of money or Government promissory notes in all bonds except the case of a bond for good behavior.

23. There is an absence of comprehensive data demonstrating the role of sureties in bringing the accused to justice. It is also true that the purpose of a cash bond is not to enrich the State's coffers but to secure the accused's presence. Mere recovery of the surety amount by penalty is not equivalent to producing the accused to face trial.

24. The social background in the light of which the requirement of sureties was ushered in is starkly in contrast to our present milieu. The concepts of solid individual identities, self-reliance, and globetrotting were obscure and had yet to evolve. There was a strong predilection for community involvement and obligations in all spheres of life. Sureties for bail established a legal relationship between the community member and the one undergoing criminal trial. The rationale was to shift the burden of responsibility from the lap of the law enforcement system to that of the community. The objective was to ensure that the rule of law is enforced by incarcerating the correct accused and not a person who might submit to law for various considerations, money, subordination, slavery, an obligation, a relationship etc. Over the years, various observations through courts and executive reports have brought to light the impracticalities and deficiencies of the practice. Illegal businesses providing sureties for large sums of money have flourished, and the menace has made the consideration of bail discriminatory and influenced by money power. In addition to that, there has been a paradigm shift in the social setting. Stronger individual identities have emerged and even been codified through Government initiatives. Biometric identification tool (AADHAR) for welfare deliverance and preventing duplicity has provided a universal identity to each resident of India and even a visitor. Linking of PAN, bank accounts, telecom, and other private services that an individual avails in their routine lives have reduced tremendously the reliance on persons adjacent or proximate to the individual to identify her and ensure the compliance to her obligations correctly. Furthermore, citizens are constantly on the move, and territorial boundaries and distinctions are not holding back their pursuit of lives. Further, equipped with a database of citizens, the governments are already proposing social plans of Universal Basic Income (UBI), direct bank transfers of grants, and the requirement of smartphone-based apps, credit cards, and pre-paid cards to aid equitable distribution. A multitude of financial instruments, blocking of requisite amount in the bank account connected to the individual, fixed deposits, payment through UPI interface, etc., can also ensure ease and better compliance. It will likely improve the possibility of the accused's attendance because they would know their money is safe and accruing interest and the failure to appear shall lead to the immediate forfeiture of the money. It is further likely to motivate them to refrain from defaulting even once. In contrast, the risk of losing money handed

over by cash to stock sureties is enormous. There needs to be more assurance or likelihood of the refund of money taken by a stock surety.

25. 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.

26. 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. Twenty five thousand (INR 25,000/-); AND

(b) To give two sureties of Rs. One Lac each (INR 100,000/-), 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 sureties can produce the accused before the court.

OR

(b) Petitioner to hand over to the concerned court a fixed deposit for Rs. Twenty-five thousand only (INR 25,000/-), 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 a bank account in similar terms. Said fixed deposit or blocking funds can 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 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.

27. 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.

28. During the trial's pendency, if the petitioner from now onwards repeats the offence 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.

29. 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.

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

31. *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

22.05.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: **YES.**