

211 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23705-2023
Date of decision:24.05.2023

Sukhwant Singh @ Pappu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.K.S. Phoolka, Advocate for the petitioner(s).

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
39	05.09.2013	Samalsar, District Moga	454, 380 IPC

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. The concerned court finally proceeded against the petitioner under section 82 of CrPC and declared the petitioner a proclaimed offender vide order dated 25.11.2016

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.

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 the maintainability of this petition under section 438 CrPC and leaving that question open; 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. Thus, exercising the inherent powers under section 482 CrPC, 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 July 07, 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 the petitioner was declared a proclaimed offender, all warrants, LOC, and all consequent proceedings in the above mentioned FIR shall remain stayed qua the petitioner, till 07.07.2023. **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. Counsel for the petitioner submits that he has complied with the order dated 11.05.2023 passed by this court and deposited sum of Rs.10,000/- in the Punjab Welfare Fund, receipt thereof has been filed in the Court today.

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 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

24.05.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.