

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26452-2023 (O&M)
Date of order: 31.05.2023

Mustafa
... Petitioner(s)
Versus
State of Haryana
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Dinesh Ghai, Advocate and
Mr. Nikhil Ghai, Advocate
for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
25	21.1.2023	Madhuban, District Karnal	342, 395, 397, 379B, 120B, 412, 427 IPC and 25 Arms Act.

1. The petitioner incarcerated for violating the above-mentioned provisions per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. Counsel for the petitioner has confined his prayer to interim bail to get better medical treatment to the petitioner who is suffering from various ailments. He has submitted that the denial of interim bail would cause an irreversible injustice to the petitioner and family. He further submitted that the petitioner has suffered paralysis attack, as a result of which, entire body of left side of the petitioner is not working. He is not able to move properly. He has taken treatment from various hospitals but his is not improving. In order to get better treatment, the petitioner needs to be enlarged on bail for at least three months. He has no objection to imposing any stringent conditions in case of grant bail.
3. While opposing the interim bail, the State does not dispute the factum of the grounds on which the petitioner is seeking interim bail, and place on record the medical certificate received from Medical Officer, District Prison, Karnal, the relevant part of

which certificate reads as follows:

"..... MRI report was suggestive of Old Lacunar Infarcts in B/L periventricular white matter and age relat3ed atrophic changes.

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According to patient, he was advised operation for the same and all the pre-anaesthetic checkup was done, but then patient denied to get operated at PGIMS, Rohtak.

Currently, his general condition is stable and he is on medications prescribed by doctors at PGIMS Rohtak."

REASONING:

4. 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 for a limited period, 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.

5. In **Mahidul Sheikh v. State of Haryana, Neutral Citation No: 2022:PHHC:003277, [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.

6. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on interim bail till 31.8.2023, 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.

7. 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.

8. Immediately on reaching home/venue, the petitioner shall procure a smartphone and inform its IMEI number and other details to the SHO/I.O. of the Police station mentioned above. The petitioner shall always keep the phone location/GPS on the "ON" mode. Whenever the Investigating officer asks to share the location, the petitioner shall immediately do so. The petitioner shall neither clear the location history, WhatsApp chats, call logs nor format the phone without permission of the concerned SHO/I.O. This condition shall continue till surrender.

9. In return for the limited protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. **It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour during the period of interim bail, then in all future matters, the concerned courts shall keep it as a factor that this court had cautioned the petitioner to reform and live a normal life but did not mend his ways.**

10. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim,

and their families. In Mohammed Zubair v. State of NCT of Delhi, 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.”

11. 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.

12. 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.

13. **The petitioner shall surrender in prison from where he was released, on or before 01.09.2023, by 2-00 p.m.**

14. It is clarified that no further extension shall be granted. However, he may apply afresh only after surrender and annexing all record his medical treatment availed by him during the period of his interim bail.

15. *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.*

The main petition is disposed of with liberty to file a fresh one after surrender. The disposal of the present petition shall not stand in the way of filing and considering the fresh petition. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

May 31, 2023
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Whether speaking/reasoned	:	Yes
Whether reportable	:	No