

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-28329-2023 (O&M)

Date of order: 03.07.2023

Pankaj Kumar @ Meenu Malhotra

... Petitioner(s)

Versus

State of Punjab

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate and
Mr. Prabhdeep Singh Bindra, Advocate
for the petitioner(s).

Mr. Karunesh Kaushal, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
18	22.9.2022	Vigilance Bureau Range Jalandhar, Bathinda, District Jalandhar.	409, 420, 467, 468, 471, 120-B IPC and Sections 7, 7A, 8, 12, 13(2) of the Prevention of Corruption Act, 1988.

1. Petitioner, incarcerating in the FIR captioned above, on the allegations of receiving bribe through his conduits for compromising tender for food procurement and transportation, its quality, and conditions, has come up before this Court under Section 439 CrPC seeking bail.
2. Petitioner's counsel prays for bail and has no objection to imposing any stringent conditions. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
3. The State opposes the bail.
4. That the prosecution case, in brief, is that during the course of inquiry of the complaint bearing no.23/2022 Ludhiana filed by complainants Honey Kumar, it was

found that in the year 2020-21, Food and Supply Department Punjab had issued certain

Transportation and Labour Cartage Policies after getting approval from the Punjab Cabinet for transportation and labour cartage work of the wheat/paddy/stock articles. As per these policies, the Director, Food Civil Supplies and Consumer Disputes Punjab had got advertised some advertisements in the newspapers inviting tenders. For the purpose of allotting tenders, District Tender Committee was constituted and the Chairman of this committee was to be the Deputy Commissioner of the concerned district or any other official appointed by him not less than the rank of Deputy Director, Field Food Civil Supplies and Consumer Disputes and the District Managers of the Purchase agencies were to be its members. For the year 2020-21 tender allotment committee of Shaheed Bhagat Singh Nagar consisted of Shrimati Rajnish Kumari, Deputy Director (field) Food Civil Supplies and consumer affairs department, Jalandhar Division, Jalandhar, Chairman of Tender Allotment Committee, Shri Rakesh Bhaskar, District Controller, Food Civil Supplies and Consumer Affairs Department, Shaheed Bhagat Singh Nagar (Convener, who is dead), Shri Janak Raj, District Manager PUNSUP, Shaheed Bhagat Singh Nagar (Member), Shri Karandeep Singh, District Manager warehouse, Shaheed Bhagat Singh Nagar (Member), Shri Sanjeev Chopra, District manager Markfed, Shaheed Bhagat Singh Nagar (Member), Shri Tapas Ranjan Sethi, District manager FCI, Jalandhar (Members). In the same way during year 2022-23 Secretary of allotment committee, Shaheed Bhagat Singh Nagar, Food Civil Supplies and consumer affairs department, Punjab had appointed Shri Tarvinder Singh Chopra, Deputy Director (Field) Food Civil Supplies and consumer affairs department, Jalandhar Division, Jalandhar as chairman of tender allotment committee and Shrimati Madhu, District Controller, Food Civil Supplies and consumer affairs, Shaheed Bhagat Singh Nagar as convener and Shri Sarabjit Singh, District manager PUNSUP, Shaheed Bhagat Singh Nagar (Member), Shri Sukhwinder Singh, District manager warehouse, Shaheed Bhagat Singh Nagar, Shri Sachin Garg, District manager, Markfed, Shaheed Bhagat Singh Nagar (Member), Shri Aridam Chaudhary, District Manager, FCI Jalandhar (Member). These committees got of their respective clusters at Shaheed Bhagat Singh Nagar. As per the Clause (6) of transportation policy and Clause (7) of Labour Cartage policy in order to properly manage the wheat and paddy crop during Rabbi and Kharif season, tenders were called from all the clusters. The tenders were to be filed online. Necessary eligibility guidelines were duly issued. As per the policy of 2019-20, the capacity of the cluster was fixed based on the income from wheat, but as per the clause 5(C) of the policy for the year 2020-21 given by Food Supply Department, Chandigarh, the capacity will be fixed from the income of Wheat/paddy, whichever is more. Because of the capacity of cluster (turnover) increased and competition decreased. Due to this there was a rise in rates of some clusters and many contractors could not participate in this. Honey Kumar, president of The RS Co-operative Labour and construction society, Kariam road, Nawanshahr, his society had filed tender for labour at basic rate in year 2020-21

from Nawanshahr and Raho cluster and PG godown, Nawanshahr. But the department rejected it and the tender of Nawanshahr was allotted to Telu Ram at 71% higher rate and Rahon Cluster at 72 % higher rate. Then in year 2022-23 he through his society again filed tender for labour from Nawanshahr and Raho cluster. The tender allotment committee again rejected his tender at basic rate and the tender of Nawanshahr was allotted to Contractor Ajaypal at 73% higher rate and Rahon Cluster at 72 % higher rate. Then the list of vehicles submitted at the time of filing the tender by Contractor Telu Ram etc. in year 2020- 21 and Contactor Ajaypal in year 2022-23 were obtained and were verified from respective district transport department authority. Then it was observed that many numbers were of scooters/ motorcycles/ car, pickup, tractor trolley, closed body truck, LPG tanker and harvester etc. During investigation the gate pass for the year 2020-21 related to Telu Ram, contactor at District Shaheed Bhagat Singh Nagar of labour cartage of Cluster Navashehr and Raho and transportation at Navashehr-2 and for the year 2020-21 related to Yashpal, contactor at District Shaheed Bhagat Singh Nagar transportation at Navashehr-1 and for the year 2022-23 related to Ajaypal Singh, contactor of labour cartage and transportation of Cluster Navashehr-1 and 2 (Navashehr and Raho) were taken from the department of food supply Shaheed Bhagat Singh Nagar. The vehicle number mentioned in the gate pass did not match with the list of vehicle numbers given by the contractors at the time of applying online. Then the vehicle numbers mentioned in the gate pass were verified from district transport department authority then it was observed that many numbers were of scooters/ motorcycles/ car, pickup, tractor trolley, closed body truck, LPG tanker and harvester etc. That these vehicles cannot be used for transportation. It was also observed that some vehicles even don't have tax paid. These things don't fulfil the rules. The mention of quantity of goods along with registration numbers of these vehicles in the gate passes *prima facie* indicates towards forged reporting and also appears to be a case of misappropriation of the goods. The concerned officers/officials made payments to the contractors without verifying the gate passes. In this regard, fake transportation of goods was shown on the basis of forged and fabricated documents. In view of the emerged facts, the technical bids submitted by the contractors were required to be rejected, but it was not done. The gate passes pertaining to the clusters of Telu Ram contractor, Jagroop Singh, owner/partner of M/s Gurdas Ram and Company and Sandeep Bhatia were obtained from the Food Supply Department, Ludhiana and the registration number of vehicles, mentioned in these gate passes, were got verified from the concerned Transport Authority and various registration numbers were found to be belonging to scooters/motorcycles etc. Similar allegations regarding allotment of tenders by using fake and fabricated bids, were leveled in the FIR at other places also. There are allegations of nexus between the petitioner Telu Ram and Bharat Bhushan, as duo in conspiracy with each other procured these tenders and Telu Ram paid certain

amount at different times to Bharat Bhushan.

5. The material investigation is complete. The petitioner is in custody since 05-01-2023, as per paragraph 15 of the bail petition. Given this and other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

6. 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.

7. In Gurbaksh Singh Sibbia v State of Punjab, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In State of Rajasthan v Balchand, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In Gudikanti Narasimhulu v Public Prosecutor, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In Prahlad Singh Bhati v NCT, Delhi, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for

bail to be the public or the State's immense interest and similar other considerations. In Dataram Singh v State of Uttar Pradesh, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

8. 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 elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

9. 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, to which, the petitioner's counsel did not object, and such conditions shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

10. 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.

11. 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 Illaqa 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.

12. 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.

13. Within fifteen days from release from the prison, the petitioner and her spouse shall forward to the Investigator/SHO on separate notarized affidavits, the complete details of bank accounts 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 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.***

14. 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.

15. The conditions mentioned above imposed by this Court are to endeavour that the exchequer gets an opportunity to for recovery of the alleged amount. 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."

16. 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.

17. 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.

18. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

19. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

20. 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.

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

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 is allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

July 03, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No