

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

CRM-M-34210-2023
Date of decision : 04.09.2023

KAVITA CHOUDHARY

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rahul Bhargava, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

On 18.07.2023, the following order was passed :-

“Apprehending his arrest in FIR No.0155 dated 01.08.2021, registered under Sections 406/409/381/419/420 /465/467/468/ 471/201 & 120-B IPC at Police Station Urban Estate, District Patiala, petitioner seeks pre-arrest bail.

Learned counsel for the petitioner inter alia relies upon order dated 27.01.2023 passed in CRM-M-2254-2022 whereby the persons accused in the present FIR have been granted the benefit of regular bail.

Notice of motion for 04.09.2023.

On the asking of the Court, Mr. Tarun Aggarwal, Sr. DAG, Punjab appears and accepts notice on behalf of the respondent-State.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to her furnishing personal and surety bonds to the satisfaction of the arresting officer/ Investigating Officer. As and when called, the petitioner shall join the investigation. She shall abide by the conditions enumerated under Section 438(2) of the Cr.P.C.”

2. Today, Ld. State Counsel on instructions from ASI Nachhatar Singh submits that the petitioner has joined investigation and is no more required for custodial interrogation.

3. Further reliance has been placed upon the order passed by Co-ordinate Bench in bunch of petitions seeking regular bail i.e. CRM-M-2254-2022 being the lead case, whereby main accused Nishu Chowdhary (in CRM-M-41551-2022) stands admitted to bail observing as under :

In a landmark decision in Sanjay Chandra v. Central Bureau of Investigation reported as (2012) 1 SCC 40, the Hon'ble Supreme Court of India crystallized the law in respect of regular bail in the following paragraphs :-

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon

which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. *Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.*

xxxx xxxx xxxx xxxx

46. *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 jeopardise 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.*

47. *In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the learned counsel for the parties and the case laws relied on in support of their respective contentions. We clarify that we have not expressed any opinion regarding the other legal issues canvassed by the learned counsel for the parties.*

48. *In the result, we order that the appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of Rs. 5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions:*

(a) *The appellants shall not directly or indirectly make*

any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(b) They shall remain present before the court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

(c) They will not dispute their identity as the accused in the case.

(d) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the learned Special Judge, CBI, that fact should also be supported by an affidavit.

(e) We reserve liberty to CBI to make an appropriate application for modification/ recalling the order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court.”

In paragraph no.27 of this judgment it is observed as under :-

“45) In ‘Bihar Fodder Scam’, this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pre-trial prisoners would not serve any purpose.”

In case **Giri Raj (supra)**, a Co-ordinate Bench of this Court granted bail since accused was in custody for 11 months. It was held as under :-

“14. The principles laid down by the Supreme Court in *Gurcharan Singh and Others Vs. State (Delhi Administration)*

AIR 1978 Supreme Court 179 were followed by the Supreme Court in *Miss Harsh Sawhney Vs. Union Territory* reported in *AIR 1978 SCC 1016* and in *Mohan Singh Vs. Union Territory, Chandigarh*. In *Mohan Singh Vs. Union Territory, Chandigarh*, reported in *AIR 1978 Supreme Court 1095*, even though the counsel for the State argued that the corruption of which the accused was *prima facie* guilty was substantial, the Supreme Court held that it was not sufficient reason to refuse bail. In paragraph 2 of the said judgment the Supreme Court held thus :-

“Counsel for the State pressed before us that the corruption of which the appellant was guilty *prima facie* according to the results of the investigation) was substantial. Let us assume so. Even then refusal of bail is not an indirect process of punishing an accused person before he is convicted. This is a confusion regarding the rationale of bail. This Court has explained the real basis of bail law in *Gurcharan Singh Vs. State (Delhi Administration)* *AIR 1978 SC 179*; (1978 CrL. L.J. 129).”

In case Anil Kumar (*supra*), a Co-ordinate Bench of this Court granted bail since accused was in custody for 07 months. There were allegations of misappropriation of Rs.4.75 crores.

Similarly, in case Surinder Pal Singh (*supra*), a Co-ordinate Bench of this Court granted bail since accused was in custody for more than 6-1/2 months. There were allegations of misappropriation of Rs.1.05 crores.

Keeping in view the facts that the offence is being tried by Magistrate and there is no other case against the petitioners, further detention of the petitioners would not serve any useful purpose since culpability of the petitioners would be established only during the trial.

All the petitions are, therefore, accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate/ Duty Magistrate concerned.”

3. Without commenting on the merits of the case and in view of

the aforesaid fact, order dated 18.07.2023 is made absolute, subject to the conditions as enumerated under Sections 438(2) Cr.P.C.

4. This order should not be treated as "blanket" order. It will not be read granting the petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.
5. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency to investigate into the charges against the petitioner.
6. The petitioner shall be deemed to be in custody for the purpose of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by the petitioner in case the occasion arises.
7. It will be open to the police or the investigating agency to move this Court for a direction under Section 439(2) Cr.P.C. to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.
8. Petition stands disposed off accordingly.

September 04, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No