

2023:PHHC:129945

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

(216)

CRM-M-37203-2023

Date of decision:- 05.10.2023

Rajinder Kumar

...Petitioner

Versus

Central Bureau of Investigation

...Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P.S.Ahluwalia, Advocate for the petitioner.

Mr. Rajiv Anand, Advocate for the respondent.

AVNEESH JHINGAN, J. (Oral)

1. This petition under Section 439 Cr.P.C is filed seeking regular bail in FIR No.RC051201S0002 dated 06.10.2021, under Sections 120-B of Indian Penal Code 1860 read with Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
2. Learned counsel for the petitioner claims parity with the co-accused Upashu Garg @ Upanshu Garg who was granted bail by this Court vide order dated 11.05.2023, which is reproduced as under:-

“1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations of dealing in 10000 tablets of Colovitol 100 SR; 5250 tablets containing Etizolam; 1600 tablets containing Lorazepam; 1800 tablets of Chlordiazepoxide; and 850 tablets containing Etizolam had come up before this Court under Section 439 CrPC seeking bail.

2. In end note 2 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 further pre-trial incarceration would cause an irreversible injustice to the petitioner and family

4. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

REASONING:

5. *As per the petitioner and also as per the custody certificate, the petitioner's total custody exceeds two years and six months. The petitioner indisputably has no criminal antecedents and has already complete pre-trial custody exceeding two years and six months. Thus, he is entitled to bail based on Dheeraj Kumar Shukla v. The State of Uttar Pradesh [SLP (Crl) 6690-2022], decided on 25 Jan 2023. Dheeraj Shukla would be attracted only when the three conditions are fulfilled,*

(a). The custody of more than 2 years and 6 months and the delay was not attributable to accused.

(b). Trial is at an initial stage.

(c) The petitioner is the first offender.

6. *The petitioner fulfills all the three conditions and thus, section 37 of NDPS Act would not be attracted. 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.*

7. *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.*

8. *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.

9. *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.

10. 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.

*11. Within fifteen days of release from prison, 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 the completion of the trial or closure of case, whichever is earlier.**If the petitioners fail to comply with this condition, then on this ground alone. In that case, 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.***

12. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms li

cense to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules.

13. During the trial's pendency, if the petitioner repeats 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.

14. 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 society. 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."

15. 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.

16. If the petitioner finds bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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.

17. 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.

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

19. 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.”

3. Reply filed, taken on record. Learned State Counsel though opposes the prayer for grant of bail, but is not in a position to distinguish the case of the petitioner qua the co-accused so far as grant of bail is concerned.

4. Without commenting upon the merits of the case, on the basis of parity of petitioner vis-a-vis co-accused so far grant bail concerned and considering that the conclusion of investigation and trial is likely to take time,

satisfactions of the Chief Judicial Magistrate/Duty Magistrate concerned. The petitioner shall be released if already not required in any other case.

5. The petition is allowed.

6. However, it is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

(AVNEESH JHINGAN)
JUDGE

October 05, 2023
spn

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No