

CRM-M-45944-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45944-2023
Reserved on: 13.10.2023
Pronounced on: 19.10.2023

Sushil Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate (through VC) with
Mr. Shiv Kumar Sharma, Advocate
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
64	02.06.2023	Sadar Kotakpura, District Faridkot	7/7-A/8/13(1)(b) of Prevention of Corruption Act r/w 120-B IPC

1. The petitioner, who is Deputy Superintendent of Police in Punjab State, incarcerated in the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 21 of the bail petition, the accused declares that he has no criminal antecedents. However, in the reply dated 25.09.2023, petitioner has the following criminal history:-

Sr. No.	FIR No.	Dated	Police Station	Sections
1	235	07.07.2023	City Faridkot	409 IPC

3. Petitioner’s counsel prays for bail by imposing any stringent conditions including declaration of assets by the petitioner and family members, and are also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and within fifteen days undertakes to disconnect all other mobile numbers. It is also

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submitted that they shall not take such declaration as self incrimination, violation of Article 20/21 of Constitution of India or any other fundamental right/law. The petitioner further contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. The State opposes the bail.

REASONING:

5. Facts of the case are being taken from the reply dated 25.09.2023, which reads as under:-

"2. That the complainant Sant Gagan Dass Chela Mahant Hari Dass r/o Dera Harka Dass, Village Kot Sukhia has lodged case FIR No.64 dated 02.06.2023 under section 07/07-A/08/13(1)(b) of Prevention of Corruption Act and 120-B IPC at PS Sadar Kotkapura against i) Gagnesh Kumar, Supdt of Police (Inv) Faridkot, ii) S. Khem Chand Parashar, iii) Sushil Kumar, DSP (PBI), Faridkot iv) Sant Malkit Dass chela Mahant Mahesh Muni and v) Jaswinder Singh, Thekedar s/o Gurbaksh Singh r/o Batthan wall gali, Main Bazar Faridkot.

3. That the brief facts of the case FIR No. 64 (supra) are given as under:

i) That in the backdrop of the case it is relevant to submit that the complainant Sant Gagan Dass was also an author of one another FIR No. 154 dated 07-11-2019 under section 302/34/120-B IPC, PS Sadar Kotkapura regarding the murder of Sant Dayal Dass at Dera Harka Dass by shot firing upon him. Subsequently during investigation, name of Sant Jarnail Dass R/o Village Kapure, Distt: Moga was surfaced as a main conspirator who caused the murder of Sant Dayal Dass by contract killing from two shooters namely Lakhwinder Singh alias Lakha r/o Nawan Killa district Faridkot and Amrik Singh alias Sheru r/o Jaimalwala district Moga. Further the prime culprit Sant Jarnail Dass before murder, got recce of place of occurrence from his associates namely Amarjit Singh Makhan and Harmit Singh alias Rubbal and both the accused after their release on bail again started residing in Dera of Sant Jarnail Dass, nevertheless this main conspirator was declared innocent by authorities during enquiry on a representation made by Chela Sohan Dass. The NOTARY GILL representation was made to DIG, Faridkot Range and same was entret Sh. Ravinder Singh, Supdt of Police, DSP, HQ, Moga who found paucity of evidence evidence against Sant Jarnail Dass and declared him innocent.

ii) That during trial Sant Jarnail Dass was summoned as an accused by Trial Court by exercising powers u/s 319 Cr.P.C, thus accused Jarnail Dass moved a bail petition before the Hon'ble High Court taking plea of the fact finding report of Police authorities but Hon'ble High Court was not satisfied with the enquiry report and called a detailed report from IGP,

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Faridkot. Consequently a Special Investigation Team was constituted by IGP, Faridkot comprising Gagnesh Kumar, PPS, Supdt of Police (D), Faridkot, Jasivat Singh, DSP, Baghapurana, Sushil Kumar PPS-present petitioner, and later on another accused of this case namely Khem Chand Prashar, Sub Inspector also inducted as a member in this SIT.

iii) That few days later, complainant received a message of Mela Ram and he along with police official Gagandeep Singh r/o Village Kot Sukhia district Faridkot reached at the rice mill of Mela Ram where 5.1 Khem Chand Parshar came and said Sant Jarnail Dass had paid a sum of Rs. One Crore to the previous officers to declare him innocent and now if you want to again get Sant Jarnail Dass frame as an accused, then you will have to pay atleast half means 50 lac to him. On 08-11-2022, complainant was called by Sant Malkiat Dass at his Dera/Gaushala at Village Bir Sikhanwala where accused-petitioner: Sushil Kumar and Jassi Thekedar were already present. They all put pressure upon the complainant to make payment of Rs. 50 lac to proceed against Sant Jarnail Dass as an accused and finally the deal struck against a sum of Rs. 35 lac. The payment was to be made in two installments of Rs. 20 lac and 15 lac respectively. After the deal struck, the Accused-petitioner DSP Sushil Kumar make a whatsapp call to SP Gagnesh Kumar and tell him about the deal of bribe and he also agreed with the deal amount.

iv) That on 09-11-2022, complainant was present at Gaushala Dera Bir Sikhan wala of Sant Malkit Dass whereas accused Gagnesh Kumar, petitioner-Sushil Kumar and Jassi Thekedar were arrived at Dera Complainant paid a bribe of Rs. 15 lac in cash to Gagnesh Kumar and he further handed over this bribe money to DSP Sushil Kumar in the presence of Sant Malkiat Dass and other accused. On 11-11-2022, complainant paid a further bribe of Rs. 5 lac cash to Gagnesh Kumar but petitioner was not present there. As per the complainant, this second payment of Rs. 5 lac was made by him after taking the same as loan from accused-Sant Malkiat Dass.

v) That till the investigation by SIT of Gagnesh Kumar was pending, a fresh SIT was constituted by IGP, Faridkot comprising Manmeet Singh, SP, HQ, Moga, Jasjyot Singh, DSP. Baghapurana, insp. Amritpal Singh, SHO, P.S Kotkapura City and SI Baldev Singh, Special Cell, Faridkot Range. Therefore complainant Sant Gagan Dass started asking accused Gagnesh Kumar and present petitioner to return his amount but finding no other option, complainant approached the Director General of Police, Punjab and moved a complaint against accused containing above detailed accusations.

vi) That a preliminary enquiry was conducted on the allegations by Deputy Inspector General of Police, Ferozepur, who availed the concerned parties sufficient opportunity to lead their evidence. Complainant reiterated his allegations in detail, duly supported by Gagandeep Singh, ASI(LR) who was accompanied with complainant when initial talk with Si Khem Chand Prashar was held regarding demand of bribe. Thereafter at

the time of payment of 1st Installment of bribe of Rs. 15 lakh, Gagandeep Singh was also present there and he even made a video of cash in the room of Dera Gaushala Bir, Sikhanwala, in the presence of accused Sant Malkiat Dass. This witness also substantiated that being a close ally of Sant Gagan Dass, he was also pressurized by 51 Khem Chand to persuade the complainant to make payment of bribe, in the name of IGP, Faridkot Range.

vii) The incumbent inquiry officer in his fact finding report no. 12846/FR-P dated 25-5-2023 found the allegations to be genuine and prima facie offence u/s made out against senior police officials namely 1) Gagnesh Kumar 2) Sushil Kumar and 3) Khem Chand Prashar with active connivance with 4) Sant Malkiat Dass and 5) Jaswinder Singh alias Jassi Thekedar. After the approval of enquiry report by Director Bureau of Investigation, Chandigarh vide order no. 2215/INV-5 dated 01-6-2023, the instant FIR No. 64/2023 registered at P.S Sadar Kotkapura and investigation transferred to Vigilance Bureau.

4. That in order to carry out an effective and impartial Investigation, Director Vigilance Bureau vide his order no. 23486-89/VB/S-9 dated 06-6-2023 has constituted a Special Investigation Team under the chairmanship of 1) Sh. Gurmeet Singh, PPS, SSP, V.B Range Ferozepur 2) Kewal Krishan, DSP, VB, Unit Ferozepur and 3) Amritpal Singh, DSP, V.B Unit Faridkot, During the course of investigation, besides complainant and ASI Gagandeep Singh, SIT has joined other material and relevant witness namely Jarnail Singh s/o Sardara Singh r/o Dhudi, Resham singh Gill s/o Jarnail Singh r/o Dhudi, Hari Krishan Goyal c/o M/s Tota Ram Hari Krishan, Kotkapura, St Vakil Singh, S/Ct Parkash Mandal, SI Sukhjinder Singh MTO, Police Lines, Faridkot, which sufficiently established the perpetration.

5. That SIT has carried out detailed investigation from technical side as well and brought on record, as many as 14 Video clips and 01 audio clip and its transcripts which were directly connected with the accused and reflecting the conversation between complainant and accused regarding demand of bribe and culpability of accused was evident from their pernal Besides the call details of following mobile numbers also obtained and gone through, as given below:

X X X X X X X X X

On going through the call details and tower locations of aforesaid different mobile numbers, it correspond the allegations that on 28-9-2022, complainant was called by witness Mela Ram alias Hari Krishan where SI Khem Chand Prashar also visited him and offered for favor in investigation of case FIR No. 154/2019 for the sake of bribe, further it has candidly established that on 08.11.2022, complainant was called by Sant Malkiat Dass at his Dera at Bir Sikhan Wala whereas Gagnesh Kumar, present petitioner Sushil Kumar and Jassi Thekedar were present and they demanded bribe of Rs.50 lacs to re-frame Sant Jarnail Dass in the case FIR

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No. 154 (supra) and finally deal struck at Rs. 35 lac. The call details and tower location also correlate that on 09-11- 2022 to receive the bribe of Rs. 15 lac from complainant-Gagan Dass, accused Gagnesh Kumar, Sushil Kumar-petitioner and Jassi Thekedar went to Dera- Gaushala Bir Sikhanwala. The further allegations on 11-11-2022, the bribe of Rs. 05 lac received from complainant by accused Gagnesh Kumar also corroborated by their call details.

6. That during the course of investigation on 12-7-2023, SIT has got recorded the statement of star witness namely ASI Gagandeep Singh No. 42/FDK, Resham Singh S/o Jarnail Singh and Jarnail Singh S/o Sardara Singh of village Dhudhi District Faridkot along with Complainant Sant Gagan Dass under section 164 Cr.P.C from Mrs. Tarjani, JMIC, Faridkot. Finding ample evidence of conclusive nature against accused, SIT has arrested accused- petitioner Sushil Kumar on 19-7-2023. During interrogation on 22-7-2023, the accused-petitioner has made a disclosure statement in the presence of official witness and put entire blame upon accused Gagnesh Kumar, whereas presence and participation of petitioner in the demand of bribe was equally substantiated with the oral and technical evidence.

7. That on 21-8-2023, accused Malkiat Dass has moved an application before the Court of Ld. Addl. Session Judge. Faridkot u/s 307 Cr.P.C for granting him pardon. In the meantime on 28-8-2023, statement of accused-Malkiat Dass has been recorded u/s 164 Cr.P.C, which reflects that on 08-11-2022 he called complainant Gagan Dass at his Dera on the instructions of petitioner-Sushil Kumar-DSP and co-accused Jassi Thekedar at his premises, DSP-Sushil Kumar (petitioner) put demand for bribe of Rs.50 lacs but deal finalized for a sum of Rs. 35 lac to be paid in two installments. On 09- 11-2022, accused Gagnesh Kumar received a bribe of Rs. 15 lac in cash and further handed over to DSP Sushil Kumar who counted the bribe money and On dated 11-11-2022 accused Gagnesh Kumar and co Accused Jaswinder Singh received bribe Rs 05 Lac in his presence. Keeping in view of importance of the evidence of Sant Malkiat Dass, SIT has also accorded his consent to declare this accused as an approver. Thus on 21-9-2023 an application has been filed by prosecution regarding Sant Malkiat Dass to declare him an approver, which is pending for consideration before Ld. Special Court, Faridkot. During investigation, co-accused Khem Chand Prashar was also apprehended by SIT on 24-8-2023. The initial investigation report in terms of section 173 Cr.P.C qua petitioner was prepared on 13-9-2023 and has been presented in the competent court on 15-9-2023, whereas arrest of co-accused Gagnesh Kumar and Jaswinder Singh Jassi Thekedar is yet to be effected. The investigation is under the way.”

6. As per custody certificate dated 12.10.2023, petitioner has undergone 02 months & 21 days. Although the prosecution has covered sufficient prima facie evidence against the petitioner but considering the pre-trial custody which is around 03 months, there

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would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order. Other FIR is under 409 IPC and thus, previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail.

7. 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.

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 elaborate and stringent conditions. In Sushila Aggarwal v. State (NCT of Delhi), **2020:INSC:106 [Para 92]**, (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, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

10. In Madhu Tanwar v. State of Punjab, **2023:PHHC:077618 [Para 10, 21]**, CRM-M-27097-2023, decided on 29-05-2023, this court observed,

[10] The exponential growth in technology and artificial intelligence has transformed identification techniques remarkably. Voice, gait, and facial recognition are incredibly sophisticated and pervasive. Impersonation, as we know it traditionally, has virtually become impossible. Thus, the remedy lies that whenever a judge or an officer believes that the accused might be a flight risk or has a history of fleeing from justice, then in such cases, appropriate conditions can be inserted that all the expenditure that shall be incurred to trace them, shall be recovered from such person, and the State shall have a lien over their assets to make good the loss.

[21] In this era when the knowledge revolution has just begun, to keep pace with exponential and unimaginable changes the

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technology has brought to human lives, it is only fitting that the dependence of the accused on surety is minimized by giving alternative options. Furthermore, there should be no insistence to provide permanent addresses when people either do not have permanent abodes or intend to re-locate.

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, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/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, or blocking the aforesaid amount in favour of the concerned 'Chief Judicial Magistrate'. Said fixed deposit or blocking funds can be from any of the banks where the stake of the State is more than 50% or from any of the well-established and stable private sector banks. In case the bankers are not willing to make a Fixed Deposit in such eventuality it shall be permissible for the petitioner to prepare an account payee demand draft favouring concerned Chief Judicial Magistrate for the similar amount.

(c). Such court shall have a lien over the funds 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). 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 of this bail order.

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(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds, thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

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. Petitioner to comply with their undertaking made in the bail petition, made before this court through counsel as reflected at the beginning of this order. If the petitioner fails to comply with any of such undertakings, then on this ground alone, the bail might be canceled, and the victim/complainant may file any such application for the cancellation of bail, and the State shall file the said application.

14. The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner’s name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner’s AADHAR details or any other source, for which they shall be legally entitled

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by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, “(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers.”

15. Within 15 days from today, the petitioner(s) shall handover his two notarized affidavits, and also two notarized affidavits of his spouses(s) if any, [One set for Investigator and one for the petitioners’ employer], mentioning the complete following details, held either individually or jointly, and cash-in-hand. ***If the petitioner(s) fail to comply with this condition, then on this ground alone, the bail might be canceled, and the State shall file the said application.*** Such disclosure of assets will not only send a stern message to the petitioner not to repeat the offence but also put all this ill-gotten money kept with others at the peril of never being returned, for the reason that the money handler would also know of the declaration on affidavit wherein there would be neither any reference nor a trace of the funds in the laundering process. The petitioner(s) and their spouses(s) to declare their all assets of India and abroad, in the following formats in Rupees (INR):

Total value of all net worth as on 31 Mar 2023	
Current total value of all net worth	
Cash in hand as on date (Indian Rupee)	
Cash in hand as on date (All other currencies)	
Details of all bank accounts	
Current amount in cash, savings, checking, deposit accounts and crypto currency	
Total Value of equity shares & mutual funds as on 31 Mar 2023	
Current total Value of equity shares & mutual funds	
Total Value of recurring deposit, fixed deposits, bonds, pension plans, & annuity insurance policies as on 31 Mar 2023	
Current total Value of recurring deposit, fixed deposits, bonds, pension plans, & annuity insurance policies	
Current total market value of all jewellery, sovereign metals, artefacts, antiques etc.	
Current total market value of property including	

buildings, land etc. its area and location	
Total income in FY 2022-23 including farms, agriculture, horticulture, wages, salaries, commissions, interests, royalties, rent, income, or gifts received from other family members	
Enter the details of vehicles owned or in possession	
Any other asset or income	
Total liabilities as on 31 March 2023 (Including loans)	
Current total liabilities (Including loans)	
Approximate expenditure during FY 2022-23	
Any other expenses	

16. 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.

17. The conditions mentioned above imposed by this Court are to endeavour that the accused tries to reform, does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. In Mohammed Zubair v. State of NCT of Delhi, **2022:INSC:735 [Para 28]**, 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.”

18. 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.

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

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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.

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. Although this court is granting bail primarily because pre-trial custody must not exceed beyond a reasonable time, and given the delay in the trial, further pre-trial custody would not be justifiable at this stage. But still, it cannot be lost sight that the offence is severe with serious repercussions, including loss of faith in the justice system. Considering the serious nature of the offence the concerned trial court is also requested to make all endeavors to expedite the trial. If the petitioner does not attend the trial without sufficient cause or deliberately delays it, this bail shall be liable to be cancelled by the trial court without any bar from this court. Similarly, if the trial is delayed by other accused on bail (if any), they are also strictly dealt with in accordance with the law.

23. *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.

(ANOOP CHITKARA)
JUDGE

19.10.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.