

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-45568-2022 in/and
CRM-M-50544-2022
Reserved on: 06.01.2023
Pronounced on: 12.01.2023

Imran Ahmed Wani ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.P.S. Khaira, Advocate,
for the applicant/petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
78	26.05.2022	Sadar Khanna, District Ludhiana	22, 25 and 27 of NDPS Act

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, has come up before this Court under Section 439 Cr.P.C. seeking bail. During the pendency of the petition, an application bearing CRM-45568-2022 for interim bail for a period of eight weeks to get better medical treatment of his wife at his own level.

2. Para 2 of the application reads as follows:

“That the wife of the petitioner is suffering from Cancer of thyroid and is in the need of urgent surgery for the removal of metastatic deposits of papillary carcinoma along with the associated and infected lymph nodes so as to prevent the further spread of the disease into the other parts of the body. The consent of the applicant/petitioner is required as the wife of the petitioner has to undergo a major life threatening surgery. There is no one else apart from the applicant/petitioner in the family to take care of the wife of the petitioner as the children of the petitioner are quite young aged 13 and 8 years respectively. The presence of the petitioner is

indispensible so as to provide both pre operative and post operative care to his wife namely Arifa Imran Wani. The wife of the petitioner is seeking treatment from Sher-in-Kashmir Institute of Medical Sciences Sri Nagar (J&K). The copy of relevant medical record of said Arifa Imran Wani is annexed as Annexure A-1 (Colly) for kind perusal of this Hon'ble Court."

3. Petitioner's counsel submits that wife of petitioner is suffering from thyroid cancer and has to undergo surgery .The petitioner contends that the denial of interim bail would cause an irreversible injustice to the petitioner and family.

4. While opposing the interim bail, the State does not dispute the factum of thyroid cancer of wife of petitioner grounds on which the petitioner is seeking interim bail.

REASONING:

5. 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 limited period interim 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 Cr.P.C., 1973.

6. Given above, provided the petitioner is not required in any other case, on appearance in the trial on the date fixed or any date before the next date, the petitioner shall be released on interim 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.

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. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of one kilometer from the victim's home during the period of this interim bail. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to *Vikram Singh v Central Bureau of Investigation*, 2018 All SCR (Crl.) 458; and *Aparna Bhatt v. State of Madhya Pradesh*, 2021 SCC Online SC 230.

9. 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.

10. 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, 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.

11. 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."

12. 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.

13. 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.

14. The petitioner shall surrender in prison from where he was released, on or before 15th March, 2023 by 4 p.m.

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.

Application for interim bail stands allowed in aforesaid terms. Main petition also stands disposed of with liberty to the petitioner to file fresh bail petition after surrender.

All pending applications, if any, stand disposed.

**(ANOOP CHITKARA)
JUDGE**

**12.01.2023
Jyoti-II**

Whether speaking/reasoned: Yes
Whether reportable: No.