

CRM-M-52056-2022 & other cases

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-52056-2022 (O&M)
Reserved on: 20.02.2023
Pronounced on: 20.02.2023

Praveen Kumar ...Petitioner(s)

Versus

State of Punjab ...Respondent(s)

CRM-M-39397-2022 (O&M)
...Petitioner(s)

Vishal Chauhan ...Petitioner(s)

Versus

State of Punjab ...Respondent(s)

CRM-M-39402-2022 (O&M)
...Petitioner(s)

Guramanpreet Singh ...Petitioner(s)

Versus

State of Punjab ...Respondent(s)

CRM-M-48332-2022 (O&M)
...Petitioner(s)

Vishal Chauhan ...Petitioner(s)

Versus

State of Punjab ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. APS Deol, Sr. Advocate with
Mr. Vishal R. Lamba, Advocate,
Mr. Himmat Singh Deol, Advocate
for the petitioner(s) in CRM-M-39402 & 52056-2022.

Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Prabhdeep Bindra, Malini Singh,& Rishabh Singla,
Advocates for the petitioner(s) in CRM-M-39397 & 48332-2022.

Mr. Gaurav Garg Dhuriwala, Addl.A.G., Punjab assisted by
Mr. Navdeep Singh, DSP, Vigilance Bureau, Mohali
for the State of Punjab

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate and
Mr. K.S. Rupal, Advocate
for the complainant in CRM-M-39397 & 39402-2022.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
6	2.6.2022	Vigilance Bureau, Phase-1, SAS Nagar, Mohali	7, 7-A of the Prevention of Corruption Act, 1988 (for short, “the PC Act”, Section 12 of the PC Act (added later on) and Section 120-B IPC
7	6.6.2022	V.B.F.S.-1, Punjab at Mohali, Distt. SAS Nagar	7, 7-A, 13(1)(a)(2) of Prevention of Corruption Act, 1988 and Section 120-B IPC and Sections 409, 420, 465, 467, 468, 471 IPC (Added later on)

This order shall dispose of four petitions i.e. CRM-M Nos.39397, 39402 48332 and 52056-2022, as common allegations and similar facts are involved in all the petitioners. However, for brevity, facts are being noticed from CRM-M-52056-2022.

2. The petitioner incarcerated in the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State opposes bail.

REASONING:

5. During investigation of the case, the FIR No.6 dated 2.6.2022, captioned above, was registered under the Prevention of Corruption Act. The accused Harmohinder Singh, who was a contractor with the Forest Department, made a disclosure statement under Section 27 of the Indian Evidence Act, to the police, to the effect that from 2017 to 2022, he has been regularly paying bribe to the officers of the forest department, politicians and their aides and he had maintained a diary in this regard, which he had concealed in the basement of his residence. Based on such disclosure statement, the accused got recovered the diary, in which the names of the persons to whom bribe had been paid for felling of *khair* trees were mentioned. The accused further disclosed that during every season, he paid bribe for taking permit for cutting of about 7000 *khair* trees. He paid money for each tree to the forest persons right from Forest Guard and upwards. He paid Rs.500/- per tree to Sadhu Singh Dharamsot, Ex-Forest Minister, Punjab, Rs.200/- to Divisional Forest Officer, Rs.100/- to Range Officer, Rs.100/- to Block Officer and Rs.100/- to Forest Guard. In this way, he had paid bribe of Rs.70 lakhs in

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every season.

6. In the status report filed by concerned Dy.S.P., Vigilance Bureau, Unit, SAS Nagar, Mohali, it was mentioned that the diary revealed financial transactions between the said accused and the petitioners. The status report also revealed that 17 persons were arraigned as accused. Although there are some specific allegations against every accused, but common allegations are of taking bribe money from Harmohinder Singh @ Honey.

7. At the bail stage, this Court is not supposed to analyse the absolute credibility of such diary. Furthermore, the grant or refusal of bail is not a finding on acquittal or conviction. Only question before this Court is that whether pre-trial incarceration which ranges from 4 to 7 months for the accused is sufficient or not. In the entirety of facts and circumstances of the case and given the nature of allegations, I am of the considered opinion that further pre-trial incarceration for the accused is not justifiable and it might be prejudicial to the accused. The petitioner's counsel has stated at bar that he would have no objection to any conditions which this Court might impose upon the accused, including their family members, for disclosing all their assets. Learned senior counsel representing all the accused have jointly stated that they would be voluntarily comply with all such conditions in letter and spirit. Thus, given above, in case this Court direct the accused and their family members to disclose their all assets would further facilitate investigation.

8. 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

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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.

9. 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.

10. 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.

11. 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.

12. 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.

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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.

13. 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.

14. Within fifteen days from release from the prison, the petitioner(s) and their spouses shall forward to the Investigator/SHO the complete details about them and their minor children (if any) of bank account 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.***

15. During the trial's pendency, if the petitioner repeats or commits any offence

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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.

16. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide an opportunity to the State to consider legal remedies for recovery of the 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."

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. *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*

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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.

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

Photocopy of this order be placed on the file of each connected case.

(ANOOP CHITKARA)
JUDGE

February 20, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No