

CRM-M-53800-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53800-2022
Reserved on: 13.02.2023
Pronounced on: 11.04.2023

Rajesh Mathur ...Petitioner

Versus

UT Chandigarh ...Respondent

CRM-M-55678-2022

Deepak Chand and others ...Petitioners

Versus

State of UT Chandigarh ...Respondent

CRM-M-57945-2022

Sandeep ...Petitioner

Versus

State of UT Chandigarh ...Respondent

CRM-M-57955-2022

Manish ...Petitioner

Versus

State of UT Chandigarh ...Respondent

CRM-M-58113-2022

Saurav Jha and another ...Petitioners

Versus

State of UT Chandigarh ...Respondent

CRM-M-60859-2022

Abhishek ...Petitioner

Versus

State of UT Chandigarh ...Respondent

CRM-M-53800-2022

CRM-M-735-2023

Raj Vaishnav @ Raj King @ Vaishnav Raj Baludas
...Petitioner

Versus

UT Chandigarh
...Respondent

CRM-M-853-2023

Gyandeep
...Petitioner

Versus

State of UT Chandigarh
...Respondent

CRM-M-987-2023

Rajesh Kumar Sharma
...Petitioner

Versus

UT Chandigarh
...Respondent

CRM-M-57796-2022

Ashok Kumar
...Petitioner

Versus

State of UT Chandigarh
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate
for the petitioner in CRM-M-53800-2022.

Mr. Barjinder Singh, Advocate for
Mr. Harjot Singh Mann, Advocate
for the petitioner(s) in CRM-M-55678-2022 and
for the petitioner(s) (except petitioner No.2) in CRM-M-58113-2022.

Mr. Manoj Tanwar, Advocate
For petitioner No.2 in CRM-M-58113-2022.

Mr. G.S. Sandhu, Advocate
For the petitioner(s) in CRM-M-57796-2022.

Mr. Sudesh Kumar Khurcha, Advocate
For the petitioner(s) in CRM-M Nos.57945 & 57955 of 2022.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
For the petitioner(s) in CRM-M-60859-2022.

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Mr. H.S. Dhindsa, Advocate
For the petitioner(s) in CRM-M-853-2023.

Mr. Gagandeep Sanwal, Advocate and
Mr. Abhimanu, Advocate
For the petitioner(s) in CRM-M-735-2023.

Mr. Nishad Ahuja, Advocate
For the petitioner(s) in CRM-M-987-2023.

Mr. Deepinder Brar, Standing counsel for UT Chandigarh.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0033	03.09.2022	Cyber Crime, District Chandigarh	384, 420, 468, 471, 509 & 120-B IPC (Section 66 D & 67 of Information Technology Act 2000 and Section 14/15 of Foreigner’s Act 1946

This order shall dispose of the above mentioned ten petitions. For the sake of brevity, facts have been taken from **CRM-M-53800-2022** titled as **Rajesh Mathur vs. UT Chandigarh.**

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. As per petition(s), some of the petitioners have criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner(s) contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner(s) and family.
3. While opposing the bail, the State contends that given the criminal past of some of the petitioner(s), the accused is likely to indulge in crime once released on bail.

REASONING:

4. The petitioner(s) operated similarly to the style of the infamous gang of Jamtara online thugs. These cyber thugs have brought disgrace to the entire country throughout the world over. Given the amount involved viz-a-viz pre-trial custody, there would be no justifiability in further pre-trial incarceration at this stage, petitioner(s) is entitled to

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bail subject to the strict compliance of the terms and conditions mentioned in this order. Thus, even the petitioner's previous criminal history is not considered strictly at this stage as a factor for denying bail.

5. 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.

6. 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(s) 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(s) 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/-) each; AND

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(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-) each, 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/-) each, 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(s) 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(s) 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 from release from the prison, the petitioners shall forward on separate notarized affidavits, to the Investigator/SHO and the complainant/victim(s) the complete details 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**

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the complainant may file any such application for the cancellation of bail, and State shall file the said application.

12. 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.

13. During the trial's pendency, if the petitioner(s) 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 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, 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." . 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(s) and the Officer in whose presence the petitioner(s) puts signatures on personal bonds shall explain all conditions of this bail

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order in any language that the petitioner(s) understands.

16. If the petitioner(s) 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(s) 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. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, without any delay. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

20. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner(s) 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.*

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

(ANOOP CHITKARA)
JUDGE

11.04.2023
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.