IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-54918-2023 (O&M)
Reserved on: 21.11.2023
Pronounced on: 24.11.2023

Nitin Sharma
... Petitioner(s)
Versus
State of Haryana
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Adarsh Jain, Advocate
for the petitioner(s).

Mr. Rajat Gautam, Addl.A.G., Haryana.
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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
22	26.5.2023	Anti Corruption Bureau, Gurugram.	409, 420, 120-B IPC and Sections 7, 13(1)(a), 13(1)(b) read with Section 13(2), of the Prevention of Corruption Act, 1988.

1. The petitioner, who is a beneficiary of the embezzled amount, incarcerated in the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.

2. As per paragraph 2 of the bail petition, the petitioner is stated to be in custody since 26.5.2023. In paragraph 9 of the reply filed by the State, the petitioner-accused has following criminal antecedents:-

Sr. No.	FIR No.	Date	Offences	Police Station
1.	23	26.5.2023	Sections 7, 13(1)(a), 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988.	ACB, Gurugram
2.	29	3.7.2023	Sections 7, 13(1)(a), 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988.	ACB, Gurugram

3. Brief facts of the case may be extracted from the reply filed by the State by way of affidavit of the concerned DySP, which reads as under:

2. That during the investigation of the present case FIR No.22 dated 26.05.2023 it reveals that on 15.12.2018, Petitioner Nitin Sharm in collusion with CO accused Yogender Aggarwal, the then General Manager, ICDP, Rewari and CO accused Sumit Aggarwal, had transferred Rs. 6,56,250/- from the account No. 000435001100025 of ICDP, Rewari, in his personal account and thereafter, on 19.12.2018 out of above said amount of Rs. 6,56,250/- petitioner Nitin Sharma transferred Rs. 50,000/- through cheque No.: 000010 in account No T 0363002900000025 IFSC Code PUNB0036300 PNB Bank, Nawan Shahr Dobamain, (Punjab) which is on the name of SRK Apartments, Zirakpur. Further, on 20.12.2018, transferred an amount of Rs.43,08,000/- was through RTGS from the account No. 000435001100025 of ICDP Rewari and the RTGS form was signed by CO accused Sumit Accountant, ICDP(integrated Aggarwal, Cooperative Development Project) and CO accused Yogender Aggarwal the then General Manager, ICDP(integrated Cooperative Development Project) Rewari (copy of form is annexed as Annexure R1) the said amount has been transfered in account No. 0363002900000025 IFSC Code PUNB0036300 PNB Bank, Nawan Shahr Dobamain, (Punjab) which is on the name of SRK Apartments, Zirakpur. From said amount of Rs. 43,08,000/-, flat No. 1607, Block-E, SRK Apartment, Zirakpur was purchased by co- accused Yogender Aggarwal and sale deed of the said flat No. 1607, Block-E, SRK Apartment, Zirakpur was executed on 25.03.2019 in favour of co-accused Yogender Aggarwal and petitioner Nitin Sharma was the nominee of said sale deed(Copy of sale deed is annexed as Annexure R2).
5. That it has also come to light in investigation that co-accused Sumit Aggarwal was Accountant, of ICDP (integrated Cooperative Development Project), co accused Yogender Aggarwal remained posted as General Manager and petitioner Nitin Sharma remained posted as Development Officer(on contract basis) in ICDP (integrated Cooperative Development Project) Rewari.
6. That the above-said accused persons namely Sumit Aggarwal, the then Accountant, Yogender Aggarwal the then General Manager and Petitioner Nitin Sharma in collusion with each other had committed cheating, fraud, wrongful gain to themselves and caused wrongful loss to the department.
7. That during the investigation co-accused Sumit Aggarwal, Yogender Aggarwal, Petitioner Nitin Sharma joined investigation and were arrested and since then all are in judicial custody. During interrogation they suffered disclosure statement and they admitted their involvement in the present case and the accused has admitted that from said amount of Rs. 43,08,000/-, flat no. 1607, Block-E, SRK Apartment, Zirakpur was purchased by Yogender Aggarwal and petitioner Nitin Sharma was nominee in the said sale deed. Disclosure statement dated 27.05.2023 of petitioner Nitin Sharma is annexed as Annexure R-3)
8. That during the investigation of the present case it has come to light that co-accused Sumit Aggarwal had transferred Rs.30,00,000/- by cheque No. 021802 dated 17.12.2018 from the account No. 000435001100025 of ICDP Rewari on 03.01.2019 to his personal account No. 10575764615 of SBI Bank Narnaul and thereafter accused Sumit Aggarwal transferred Rs. 25,00,000/- from his above account to account of co accused Rachna Aggarwal his wife by cheque No. 616280 dated 04.01.2019 bearing account No. 000000352118667586.
9. It is further submitted that two more case FIR No. 23 dated 26.05.2023 under Sections 07, 13(1)a, 13(1)b read with 13(2) of Prevention of Corruption Act, 1988 at Police Station ACB Gurugram and FIR No. 29 dated 03.07.2023 under Sections 07, 13(1)a, 13(1)b read with 13(2) of

> Prevention of Corruption Act, 1988 at Police Station ACB Gurugram were also registered against the petitioner Nitin Sharma."

4. Petitioner's counsel prays for bail by imposing any stringent conditions including that he 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. The petitioner contends that custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

5. The State's counsel opposes the bail and states that considering the allegations, the petitioner's custodial interrogation is necessary. The State's counsel further contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

6. In <u>*Maulana Mohd Amir Rashadi*</u> v. <u>State of U.P</u>., (2012) 3 SCC 382, Hon'ble Supreme Court holds,

> "[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

7. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

8. Given the penal provisions imposed and the sentence provided by the Legislature, the nature of allegations and other factors and circumstances peculiar to this case, it may be appropriate to afford the petitioner a final opportunity to course correct. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying bail. Furthermore, a *prima facie* perusal of paragraph 5 of

the bail petition reveals sufficient grounds for granting bail.

9. 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 require, 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 of justice and must weigh it 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:INSC:107 [Para 7]**, (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.

10. 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 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. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11,

Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

11. 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.

12. 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 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.

13. 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, before whom the bonds are required to be furnished. When the bonds are to be furnished before a Judicial Magistrate, then in case of the non-availability of the concerned Judicial Magistrate, to any other 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 a 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.

(e). While furnishing personal bond, the petitioners 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)	

14. The petitioner is directed to join the investigation within seven days and also as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. 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.

16. 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.

17. <u>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</u>. <u>The petitioner must comply with this condition within fifteen days of release from today.</u> 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 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."

18. 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.

19. In return for the 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 afforded a final opportunity to the petitioner to reform and live a normal life but did not improve***.

20. 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 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."

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

27. *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

November 24, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No

ASHWANI KUMAR
2023.11.24 15:22
I attest to the accuracy and authenticity of this order/judgment