

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-57343-2023 (O&M)

Reserved on: 29.11.2023

Pronounced on: 06.12.2023

Munish Sharma

... Petitioner(s)

Versus

State of Haryana

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. R.S. Cheema, Sr. Advocate with
Mr. Ishan Khetarpal, Advocate
for the petitioner(s).

Mr. Rajat Gautam, Addl.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
21	11.10.2023	ACB, Panchkula, Anti Corruption Bureau, Haryana.	120-B, 384, IPC and 7, 7A of the Prevention of Corruption Act, 1988.

1. The petitioner incarcerated in the FIR captioned above has come up before this Court under Section 439 CrPC seeking bail.
2. The petitioner has not disclosed criminal antecedents; however, the representing counsel states on instructions that the accused has no criminal antecedents. As per the custody certificate also, petitioner has no criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State opposes bail.

5. The facts of the case are taken from reply dated 29.11.2023 which read as under:-

- “1. That the present FIR No. 21 dated 11.10.2023 u/s 7, 7A Prevention of Corruption Act, 1988 & Sections 384, 120B IPC has been registered at PS ACB Panchkula on the complaint of Sh. Rajesh Kumar r/o Global City, Kurukshetra. The complainant alleged that Jaibir Singh Arya, IAS, Managing Director, Haryana State Warehousing Corporation (HSWC), Panchkula has demanded Rs. 5 Lac through mediator Sandeep Ghanghas, DM, Haryana Warehousing Corporation, Panipat and accused Sh. Rajesh Bansal, who is working as General Manager, CONFED, Panchkula, for not transferring his wife Smt. Rinku, recently promoted as Assistant Manager, Quality Control from the post of Technical Assistant in Haryana State Warehousing Corporation, Kurukshetra and to post her in Kurukshetra itself 104 as District Manager, Haryana Warehousing Corporation, Kurukshetra. State The complainant further alleged that deal was fixed for bribe money of Rs. 3 Lac but Jaibir Singh Arya, IAS, the then Managing Director, HSWC will take said bribe through his known i.e. accused Sh. Rajesh Bansal who is working as General Manager, CONFED, Panchkula. Later on, Sandeep Ghanghas talked to Rajesh Bansal who told him to handover the said bribe money of Rs. 3 Lac to the accused petitioner Munish Sharma at Shop No. 82, Industrial Area, Phase-2, Panchkula who in turn will further handover the said bribe money to accused Rajesh Bansal, GM, CONFED, Panchkula and further Rajesh Bansal will pass it on to Jaibir Singh Arya, IAS, Managing Director, HSWC. On 11.10.2023, as per the legal procedure, a trap was laid and accused petitioner Munish Sharma (who received the said bribe money as per the direction of accused Rajesh Bansal, GM) was arrested red handed while accepting bribe money of Rs. 3 Lac. And further the said bribe money was to be handed over to Jaibir Singh Arya, IAS by the accused Rajesh Bansal, DM, Panchkula. During investigation, co accused Jaibir Singh Arya was arrested and sections 13(1) (b), 13(2) of Prevention of Corruption Act, 1988 were added. Arrest accused of co accused Rajesh Bansal is pending as he is absconding to avoid the process of law.
2. That, during investigation, accused petitioner Munish Sharma and his co-accused Jaibir Singh Arya, IAS suffered their disclosure statements dated 12.10.2023 and admitted to have committed this offence of demand and acceptance of bribe money of Rs. 3 Lac from the complainant Sh. Rajesh Kumar for the posting of Smt. Rinku as DM Kurukshetra.
3. That, statements of Sh. Sandeep Ghanghas, DM Panipat and the complainant Sh. Rajesh Kumar were got recorded under section 164 Cr. PC wherein they clearly established the said chain of facts of commission of offence of demand and acceptance of bribe money of Rs. 3 Lac by accused Jaibir Singh Arya, IAS through middlemen i.e. the accused petitioner Munish Sharma and accused Rajesh Bansal, DM, Panchkula.
4. That, during investigation, mobile phones of Sandeep Ghanghas, DM, HSWC, Panipat, accused Jaibir Singh Arya, MD, HSWC and accused petitioner Munish Sharma were taken in police possession and analyses of whatsapp calls/chats messages was done which clearly established the nexus of demand and acceptance of bribe money by accused Jaibir Singh Arya, IAS, MD, HSWC in connivance with other accused persons including the Munish Sharma. Also, complainant Sh. Rajesh Kumar furnished Det audio recording device containing conversation held between him, Sandeep Ghanghas, DM, HSWC, Panipat, and accused persons namely Rajesh Bansal above said and Jaibir Singh Arya, MD, HSWC and the voice recordings saved therein also clearly established the said whole nexus o demand and acceptance of bribe money.

5. That, it has been found during investigation that:-
 - (i) When Sandeep Ghanghas contacted the accused Jaibir Singh Arya, MD, HSWC for transfer of Smt. Rinku, he asked to contact the accused Rajesh Bansal, GM, CONFED, Panchkula.
 - (ii) When Smt. Rinku Hooda joined after completion of her Child Care Leave period on 05.10.2023, her joining report was shared by Sandeep Ghanghas directly with accused Jabir Singh Arya on his phone through Whatsapp chat/message.
 - (iii) On 05.10.2023, the posting order of Smt. Rinku was passed by the accused Jaibir Singh Arya, IAS and he sent its copy to the accused Rajesh Bansal (who had no official business/concern in this matter). This has been established from the mobile phone of accused Jaibir Singh Arya, IAS.
 - (iv) The accused Rajesh Bansal, in turn, forwarded the same to Sandeep Ghanghas on the same day (this has been established from the mobile phones of Sandeep Ghanghas as well as his statement recorded u/s 164 Cr. PC.)
 - (v) After the joining of Smt. Rinku at her new place of posting accused Rajesh Bansal, in presence of Sandeep Ghanghas and complainant Sh. Rajesh Kumar made a telephone call to Jaibir Singh Arya confirming that both of these persons had come to him with bribe money and he would come to him later on, to which Jaibir Singh Arya, agreed by saying Okay.
 - (vi) The accused Rajesh Bansal had also sent contact number of accused petitioner Munish Sharma to Sandeep Ghanghas who in turn shared his shop location to Sandeep Ghanghas, where the bribe money was delivered. (This has been confirmed from the mobile phone of Sandeep Ghanghas and accused petitioner Munish Sharma).
6. That, before the red handed trap of accused petitioner Munish Sharma, audio recordings were done by the complainant in which the chain of demand/acceptance of bribe is clearly established and even bargaining regarding the said bribe money was done by accused Rajesh Bansal who tells the complainant Rajesh Kumar and Sandeep Ghanghas that he is well known to the accused Sh. Jaibir Singh Arya, IAS for many years since when they used to be posted together at Panchkula. Accused Rajesh Bansal even discloses earlier incidents of taking bribe from other officers of the said department with complainant and Sandeep Ghanghas in the said audio recordings provided by the complainant.
7. That, accused petitioner Munish Sharma and his co-accused persons have committed a serious crime of demand and acceptance of bribe money of Rs. 3 Lac for transfer of Smt. Rinku as DM, HSWC, Kurukshetra. It is further submitted that the co-accused of accused Jaibir Singh Arya i.e. Rajesh Bansal is found to be a habitual offender and another case RC-18 of 2019 has also been registered at CBI, ACB, Chandigarh on the similar offences against him and he was arrested by CBI red handed while taking bribe money of Rs. 1.5 Lac.
8. That, accused Munish Sharma is habitual of working as conduit/middleman in the nexus of corruption/bribery of public servants for reward as he received money from accused Rajesh Bansal for similar activities earlier also. It is also pertinent to mention here that earlier also the petitioner accepted Rs. 2 lac as bribe from Sandeep Ghanghas on 09.11.2023 and shared location of his shop to him through whatsapp for this purpose.

9. That, if accused Munish Sharma is released on bail, he may hamper the investigation, win over witnesses and even may flee away from the process of law.”

6. As per paragraph 12 of the bail petition, the petitioner is in custody since 11.10.2023. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the *prima facie* analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

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 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.

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 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 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.
- (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 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. 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.

16. 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 a sense of security to the victim. 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."

17. 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.

18. 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.

19. 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.

20. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

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 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

December 06, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes