

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-59912-2022 (O&M)

Reserved on: 23.02.2023

Pronounced on: 01.03.2023

Harveen Kaur

... Petitioner(s)

Versus

State of Punjab

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Sant Pal Singh Sidhu, Advocate and
Mr. Sarbuland Mann, Advocate
for the petitioner(s).

Mr. Ferry Sofat, Addl.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
11	16.08.2022	Vigilane Bureau, Ludhiana, District Ludhiana.	420, 409, 467, 468, 471, 120B IPC and Sections 7, 7A, 8, 12, 13(2) of the Prevention of Corruption Act, 1988

1. The petitioner, a woman aged 32 years, was posted as DFSC [District Controller, Food Civil Supplies and Consumer Disputes, Ludhiana], incarcerated in the FIR captioned above, on the allegations of receiving a bribe of Rs. 3 lacs from Telu Ram, for not raising objections on his tender for transportation of food grain and to evade the verification of transportation, has come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 17 of the bail petition, the accused declares that she has no criminal antecedents.
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 and the complainant oppose bail.

5. It will be appropriate to refer to the paras 4 & 5 of the response dated 2-2-2023, filed by the State through the concerned DySP, which reads as follows:

“4. That the prosecution case, in brief, is that during the course of inquiry of the complaint bearing no.72/2022 Ludhiana filed by complainants Gurpreet Singh etc., it was found that in the year 2020-21, Food and Supply Department Punjab had issued certain Transportation and Labour Cartage Policies after getting approval from the Punjab Cabinet for transportation and labour cartage work of the wheat/paddy/stock articles. As per these policies, the Director, Food Civil Supplies and Consumer Disputes Punjab had got advertised some advertisements in the newspapers inviting tenders. For the purpose of allotting tenders, District Tender Committee was constituted and the Chairman of this committee was to be the Deputy Commissioner of the concerned district or any other official appointed by him not less than the rank of Deputy Director, Field Food Civil Supplies and Consumer Disputes and the District Managers of the Purchase agencies were to be its members. Sh. Munish Narula Deputy Director had been nominated as the Chairman of the District Tender Allotment Committee, Ludhiana by the Deputy Commissioner, Ludhiana whereas the members of District Tender Committee were officials namely Sukhwinder Singh Gill, District Controller, Food Civil Supplies and Consumer Disputes, PUBLIC OF INDIA Ludhiana (West), Harveen Kaur, District Controller Food Civil Supplies and Consumer Disputes, Ludhiana (East) i.e. the present petitioner, Hardeep Singh Chahal, District Manager Markfed Ludhiana, Jagandeep Singh Dhillon, District Manager, PUNSUP Ludhiana, Mahinder Pal Singh, District Manager, Warehouse Ludhiana and Gangeshwar Gosai, District Manager, FCI Ludhiana. The lists of the vehicles submitted by contractors namely Jagroop Singh, Telu Ram and owner/partners of M/s Gurdas Ram and Company at the time of submitting tenders for the year 2020-21 were got verified from the concerned Transport Authorities and various registration numbers were found to be of scooters/motor cycles etc. The gate passes pertaining to the clusters of contractors were obtained from the Food Supply Department Ludhiana and the registration number of the vehicles, mentioned in those gate passes, were also got verified from the concerned Transport Authorities and various registration numbers were found to be relating to scooters/motorcycles/cars etc. despite the fact that the goods cannot be transported through these type of vehicles. The mention of quantity of goods along with registration numbers of these vehicles in the gate passes prima facie indicates towards forged reporting and also appears to be a case of misappropriation of the goods. The concerned officers/officials made payments to the contractors without verifying the gate passes. In this regard, fake transportation of goods was shown on the basis of forged and fabricated documents. In view of the emerged facts, the technical bids submitted by the contractors were required to be rejected, but it was not done. The gate passes pertaining to the clusters of Telu Ram contractor, Jagroop Singh, owner/partner of M/s Gurdas Ram and Company and Sandeep Bhatia were obtained from the Food Supply Department, Ludhiana and the registration number of vehicles, mentioned in these gate passes, were got verified from the concerned Transport Authority and various registration numbers were found to be belonging to scooters/motorcycles etc. Thereafter present case FIR No. 11 dated 16.08.2022 was registered against the contractors and the concerned officers/officials under sections 420/409/467/468/471/ 120-B IPC and 7, 8, 12, 13(2) of the P.C. Act

1988. Copy of FIR is already attached with the petition as Annexure P-1. During investigation, section 7-A of Prevention of Corruption Act, 1988 (as amended in 2018) and section 201 IPC have been added in this case.

ROLE OF THE PETITIONER & STATUS OF INVESTIGATION:-

5. That during course of investigation, it came on record, that the Petitioner being DFSC, Ludhiana (East) was Convener Cum Member of District Tender Committee, Ludhiana at that time, when tenders were floated for Labour, Cartage and Transportation of the food grain etc. for the year 2020-2021. Thus, the other co-accused like Jagroop Singh, Telu Ram, Sandeep Bhatia and owner/partners of M/s Gurdas Ram and Company, submitted/uploaded their technical bid of the tender for the year 2020-21, along with other requisite documents, the lists of the vehicles on the Government website/portal. That in the preliminary inquiry before the registration of FIR, it came on record that in said lists of the vehicles various registration numbers were PUBLI der Pal Singh Pfound to be of scooters/motor cycles etc. and not of trucks or any Fagd. No. 1887 VT. OF INDIA other vehicle which can carry the bags/food grains. These wrong/false numbers of the vehicles were given by the contractors in lieu of the actual truck numbers only to show the availability of the adequate fleet of vehicles and in order to make them eligible for the contract. That the official respondents (District Tender Committee) were duty bound to verify these vehicles while passing the contract in the technical bid and all this was done only on asking of the then minister Bharat Bhusan Ashu. Thus, this was one of the manipulations done by the officials to adjust/make successful bids of the contractors of their own choice after taking bribe and on asking of the then minister Bharat Bhushan Ashu who also undue advantage/financial benefits for himself.”

6. The allegations against the petitioner are that in return for the alleged bribe of rupees three lacs, she ignored the conflicting registration numbers and avoided physical verification of food grains during its loading, transportation, and unloading.

7. The material investigation is complete. The petitioner is a mother of a child aged three years and is stated to be in custody since Nov. 22, 2022, and is a first offender. Being a woman, the proviso of section 437(1) CrPC, comes to her benefit and has a child aged three years, and keeping in view the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

8. 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.

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 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 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.

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, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

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, to which, the petitioner's counsel did not object, and such conditions shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

12. 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.

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, 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/-), 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.

14. 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.

15. Within fifteen days from release from the prison, the petitioner and her spouse shall forward to the Investigator/SHO on separate notarized affidavits, the complete details of bank accounts 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.***

16. 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.

17. The conditions mentioned above imposed by this Court are to endeavour that the exchequer gets an opportunity to for recovery of the alleged 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."

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

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

24. *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

March 01, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No