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IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRM-M No. 62220 of 2023 (O&M)

Date of Decision: 15.12.2023

Bhim Singh Rathi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Ankit Bishnoi, Advocate,
Mr. Akshay Chadha, Advocate and
Mr. Raghav Chadha, Advocate
for the petitioner.

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

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
113	16.03.2022	Badshahpur, District Gurugram	406, 420, 467, 468, 471, 120-B of IPC (Section 201 of IPC and Sections 7, 8, 13(1)(B) of Prevention of Corruption Act, 1988 added later on)

1. The petitioner incarcerated in the FIR captioned above has come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 15 of the bail petition, the accused declares that he 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 extracted from the order passed by Ld ASJ, Gurugram

dated 28.11.2023:

“ Brief facts of the case relevant for the purpose of disposal of this application are that a complaint no.2962/CP/22/APR dated 02.03.2022 and 206-5P dated 02.03.21 received in the police station for lodging FIR against Subhash Chand, son of Nathan Singh R/o.H.No.2908, Block C-1, Near Paras Hospital, Sushant Lok-I Gurugram, Smt. Shel Narang, daughter of Late Sh. Kapil Dev Arora resident of H-1/11, South City-11, Gurugram, Bhim Singh, son of Late Sh. Kalu Ram, Vinod, son of Nathu Ram, both Residents of C-80, opp. Sector-4, Surya Vihar Gurugram and other accused who in collusion with each other have tried to grab the land owned and possessed by the complainant and his wife by preparing forged and fabricated documents and getting registered a forged and fabricated sale deed bearing vasika no.1493 ddated 24.02.2022 on the basis of forged and fabricated GPA no.13907 dated 18.09.1996.

The complainants namely Puran Manchanda, son of Sh. Khushi Ram and Smt. Pratibha Manchanda, W/o.Puran Manchanda both residents of 213, Karippa Marg, MB Road, New Delhi Mobile No.881041904 are senior citizens of India and owner in possession of land bearing rect. No.55, killa No.3/(7-9), 4/1(7 13) total measuring 15 kanal 2 marla situated within the revenue estate of Village Begampur Khatola, Tehsil Kadipur, District Gurugram since last more than 30 years. The complainants never sold out the aforesaid land to anybody nor ever executed any power of attorney in any manner in favour of any person. On 28.02.2022 the complainant Puran Manchanda alongwith Mr. Basant Raghav went to Patwar Bhawan Gurugram for obtaining revenue papers of his aforesaid land wherein he was shocked and surprised to know that a person known as Bhim Singh Rathi (Mobile No.9811224807) came to the halqa patwari for sanctioning of mutation of the aforesaid land of the complainants on the basis of forged and fabricated sale deed bearing vasika No.11493 dated 24.02.2022. On enquiry, the complainant Puran Manchanda further came to know that the said forged and fabricated sale deed bearing vasika No.11493 dated 24.02.2022 alleged to be registered in the office of Sub-Registrar Kadipuri District Gurugram has been executed and got registered by accused No.1 Subhash Chand on the basis of forged and fabricated general power of attorney Vasika No.13907 dated 18.09.1996 alleged to be registered in the office of Sub-Registrar-V, South East Delhi. However, the complainants never executed or registered any GPA in favour of any alleged Subhash Chand, nor they ever met him or know him in any manner. He is a totally stranger to the complainants. The alleged GPA bearing vasika No.13907 alleged to be dated 18.09.1996 and the alleged sale deed bearing vasika No.11493 dated

24.02.2022 on the basis of same are totally false, forged, fabricated, illegal and fraudulent documents created by accused No.1 to 4 in collusion with other persons and also colluding with the officials of Sub-Registrar concern without any notice, knowledge and involvement of the complainants in any manner. The complainants never executed and got registered the aforesaid GPA in any manner nor there had ever been any involvement of the complainants in execution and registration of the alleged GPA or the alleged sale deed in any manner. The original sale deed of the aforesaid land of the complainants is with them and true copy is attached with the complaint. The perusal of forged and fabricated sale deed would reveal that the accused have not mentioned the PAN Number in the alleged sale deed, nor there is any reference of depositing 1% amount of TDS which is mandatory to be deposited before execution and registration of the sale deed. The current market value of the aforesaid land measuring 15 kanal 2 marla of the complainants is not less than 50 crores wherein the alleged sale deed had been shown to be executed fraudulently showings sale consideration of meager amount of Rs.6,60,62,500/-. The complaints never received any such alleged amount as shown in the alleged sale deed bearing Vasika No.11493 Dated 24.02.2022 which has been forged and fabricated by the accused No.1 to 4 in collusion witnesses, scribe and officials of the Sub-Registrar Tehsil Kadipur Distt-Gurugram to cause wrongful loss to the complainants and wrongful gain to all the accused. Hence the present complaint is filed to take strict legal action against all the accused as per rules.”

6. As per paragraph 13 of the bail petition, the petitioner is in custody since 26.09.2023. 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 elaborate 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 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 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 petitioners/applicants 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 prepaid 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

15th December, 2023
Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.