

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1437-2024 (O&M)
Date of order: 06.02.2024

Hartej Singh
... Petitioner(s)

Versus

State of Punjab
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Gagandeep Singh Virk, Advocate
for the petitioner(s).

Ms. Jaiteshwar S. Bhandari, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
13	2.11.2020	Vigilance Bureau, Flying Squad 1, Punjab	409, 420, 465, 466, 467, 471 and 120-B IPC and Sections 7, 7(a) of the Prevention of Corruption Act, 1988 and Sections 82 and 83 of the Registration Act, 1908.

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court by filing second petition under Section 438 CrPC seeking anticipatory bail. Earlier also, the petitioner had come up before this Court by filing a petition seeking anticipatory bail, but the same was disposed of as withdrawn, as the petitioner was already arrested by the Enforcement Directorate.
2. In paragraph 20 of the bail application, the accused declares that except the present FIR and the ED complaint arising out of present FIR, in which the petitioner is already on bail, the petitioner has no criminal antecedents. The details of the complaint case read as under:-

Complaint case No.	Dated	Sections
COMA/3/2023	16.6.2023	3 and 4 of the Prevention of Money Laundering Act, 2002.

3. Facts of the case are being extracted from the reply filed by the State by way of affidavit of the concerned DySP, which read as under:-

“2. That a Case FIR No. 13 dated 02.11.2020, u/s 409, 420, 465, 466, 467, 471, 120-B IPC, 7, 7-A, Prevention of Corruption Act, 1988 as amended by Prevention of Corruption Act, 2018, Police Station Vigilance Bureau, Flying Squad-1, Punjab at Mohali was registered after conducting a detailed enquiry in which it was found that the revenue officials in connivance with other accused persons entered a mutation no. 1767 dated 05.09.2016 and transferred Shamlat Land of Village Soonk in favour of many persons who were not khewatdars of that village. They have also illegally transferred excess land/share in favour of many persons beyond their eligibility. This case was registered against the following accused persons:-

1. xx xx xx xx xx xx
11. xx xx xx xx xx xx
3. That during investigation, following 9 persons were nominated as accused in this case:-
1. xx xx xx xx xx
3. Hartej Singh@ Gurtej Singh S/o Surinder Singh, R/o village Soonk, tehsil Kharar, Distt. SAS Nagar(**The present petitioner**).
9. xx xx xx xx xx”

4. That during the investigation of this case it has been established that mutation no. 1767 dated 05.09.2016 was registered, in which about 117 Acre Shamlat Land of Village Soonk was wrongfully entered, mentioning excess share to some Khewatdars or mentioning shares to the persons who were not the Khewatdars/residents of the village. It was also established during investigation that heavy amount of bribe was distributed for entering/sanctioning of this mutation and further distributing land shares in excess to the persons and even to the persons who were not Khewatdar/Residents of the village. Out of this 117 Acres land, about 103 Acres land has further been sold to the different buyers directly by the khewatdars or on the basis of GPA/Sub- GPA's. Out of this 103 Acres land, sold more than 22 Acres of land than the increased shares were found to have been sold, (thus, 22 Acres land exists nowhere). The revenue record pertaining to Shamlat land in question like registers/vasikas/GPAS/Sub- GPAs were taken on record during the investigation.”

4. Petitioner's counsel submits that offences alleged against the petitioner are predicate offences and not scheduled offences which have been registered by the Enforcement Directorate. Moreover, the petitioner has remained in custody for 3 months and at that time, the State police did not seek his custodial interrogation. Now, after spending three months in jail, the petitioner has come back and now again, they want to take his custody, which would serve no purpose whatsoever. He has further submitted that the petitioner is entitled to seek parity with co-accused Balbir Singh,

who has already been granted anticipatory bail by this Court vide order dated 1.11.2021 in CRM-M-18458-2021 *Balbir Singh Vs. State of Punjab*.

5. Petitioner prays for bail by imposing any stringent conditions including declaration of assets by the petitioner and family members, and are also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner 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 family.

6. Although State's counsel does not deny that initially, the petitioner was in the custody of Enforcement Directorate and at that time, they did not seek his custodial interrogation, but he opposes the bail and states that considering the allegations leveled against the petitioner, his custodial interrogation is necessary.

7. In **Maulana Mohd Amir Rashadi v. State of U.P.**, (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.

8. 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.

9. An analysis of above clearly points out that the State was aware of the petitioner's arrest, because he had filed a petition seeking anticipatory bail, which was withdrawn, as he was arrested by the Enforcement Directorate. As such, though the State was

aware of petitioner's arrest, but the investigator did not choose to arrest him. In paragraph 8 of the reply, it has been explicitly mentioned by the concerned DySP that the matter has been investigated thoroughly and after completing the investigation, challan has been filed.

10. 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 7 of the bail petition reveals sufficient grounds for granting bail.

11. Given above, custodial interrogation of the petitioner is not required and regarding pre-trial incarceration, since on the same set of allegations, he has already undergone three months of custody in the case filed by Enforcement Directorate, it would not be justifiable to send the petitioner for custodial interrogation again.

12. 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**

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.

13. 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.

14. 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.

15. 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.

16. Given above, provided the petitioner is not required in any other case, he 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 Investigator/SHO/or the concerned Court, in case challan filed, 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 Ilqa 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 investigator/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/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)	

17. The petitioner is directed to join the investigation within seven days and also as and when called by the Investigator, if investigation is pending or joined proceedings before the trial Court. 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.

18. 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.

19. 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.

20. 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 today. 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."

21. 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.

22. 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.**

23. 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."

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. *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

February 06, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No