

101 IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRM-M-2992-2024
Date of Decision: 20.01.2024

Ramesh Chandra Sharma ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Inder Pal Goyat, Advocate for the petitioner.

Mr. Vikrant Pamboo, Sr. D.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
20	18.10.2005	State Vigilance Bureau, Hisar	13 of PC Act, 1988 and 420, 467, 468, 471, 120-B IPC

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 16 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 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.
4. The state's counsel opposes the bail and states that considering the allegations, the petitioner's custodial interrogation is necessary.
5. Facts of the case are being taken from para no.2 of the petition itself which reads as follows:

“Investigation No.3 dated 21.4.05, Chandigarh, against Shri. K.C. Bangar, Ex. Chairman, Haryana Public Service Commission. After having been registered vide Memo No. 14/2/05-2V(1), on the basis of complaint received from Sh.Vishal

Chauhan, [H.No.](#) 1524, Urban Estate Phase II, Jalandhar, Punjab, (attached in original), Deputy Inspector General of Police, State Vigilance Bureau(H), Ambala Range, Ambala, was entrusted with the investigation vide letter No.244/Secret/SVB(H) dated 21-04-05 of the Director, State Vigilance Bureau(H), Panchkula. That, when during investigation, Haryana Public Service Commission did not provide the record and did not cooperate in the investigation, the Chief Secretary and the Haryana Government vigilance Department was informed. That after the orders of the Chief Secretary, Government of Haryana, vide his memo No.14/2/05-2(V)I, dated 5-08-05, for registration of a criminal case, Director, State Vigilance Bureau (H) Panchkula, vide his letter No. 18220/Secret/SVB(H) dated 13.10.2005, directed that after getting the record related to the above investigation from the Deputy Inspector General of Police, State Vigilance Bureau(H), Ambala Range, Ambala, register the case. That the record related to the above investigation No.3/05, Chandigarh was received Intelligence report on 15.10.2005. That as per the intelligence report regarding the investigation, Shri K.C Bangar, Ex. Chairman, H.P.S.C., while occupying his office, has collected corers of rupees by appointing ineligible persons to different posts. On the posts of Professor (College Cadre) of different subjects, such appointments have been made in the year 2001, as were not related to the posts of this subject, For example, Sh.Anil Kumar, Smt. Nisha and Sh. Jatinder Singh had been appointed to the posts in Computer Science, whereas all of these persons have not qualified N.E.T. in Computer Science. Similarly, in the year 2003, persons with lesser qualifications were appointed as Assistant-Professors and lecturers in the Chaudhary Devi Lal Memorial Engineering College, Panniwala Mota, Sirsa, whereas, eligible candidates were not appointed. For example, Sh. Rajiv Kumar, Sh. Rajesh Kharab, Smt. Meena Kumari etc. Sh. Pardeep Sangwan, who belongs to the village of Sh. Bangar and who was possessing false experience certificate, was appointed to the post of Drug Inspector. Smt. Bangar, who was a School Lecturer, was appointed, illegally, as lecturer in Guru Jambheshwar University illegally by misusing the post. All the appointments during the tenure of Sh. K.C. Bangar have been made only for money and in collusion with the Ex-Chief Minister, Sh. Chautala. That as per the contents of the intelligence report, offence under section 13 PC Act, 1988 and Section 420, 467, 468, 471, 120-B, IPC, is found to be made out. That after registering the case of H.P.S.C. and Sh. Om Parkash against K.C. Bangar, Ex. Chairman Chautala, Ex. Chief Minister, under sections 13 PC Act, 1988 and Section 420, 467, 468, 471, 120 B IPC special report is being sent to The Illaqua Magistrate, Sirsa and Hisar. The case is given to Sh. Satyavir Singh DSP, SVB and Hisar for investigation. Record file, Police file, statement file and other 21 documents file and 305 application forms filed for the above said services and the case file, is being sent to Sh. Satyavir Singh DSP.

That besides the intelligence report, letters and complaints attached with the compliant of Sh. Vishal Chauhan attached with the file, letter No.5381 dated 26-04-05, No.9113 dated 24-06-05, No. 11468 dated 27-07-05 No. 1741 dated 19-08-05, No.15933 dated 6-09-05 may also be looked into during investigation. If irregularity or involvement of any other person is found, he should also be joined in the investigation. Copy of the FIR as special report is being sent through special constable, Surrender Pal 725/FTB to the Illaqua Magistrate and SP Sirsa and through Constable, Sumer Singh No.958/SRS to the Illaqua Magistrate and SP Hisar. Copy of the Police file alongwith all the record of case No.3/05, Chandigarh is being sent to Sh. Satyavir Singh, Deputy Superintendent of Police, State Vigilance Bureau(H), Hisar under the orders of Superintendent of Police, State Vigilance Bureau(H), Hisar Range, Hisar.”

6. Counsel for the petitioner submits that FIR has been registered after a gap of 18 years and the petitioner has retired way back and is currently 70 years of age and is a first offender. Since this Court has already granted bail to similarly placed accused, there is no need for the State to file reply and the State is having instructions in this matter and further that the State is not disputing that similarly placed accused have already been granted bail.

7. State counsel does not dispute the aforesaid arguments, but opposes the bail for the reason that petitioner was an Examiner in the selection of HCS (Executive Branch) and other Allied Services of 2004.

8. An analysis of the grounds taken in the petition and the arguments of counsel for the petitioner as well as State would lead to the following outcome. Petitioner was not named in the FIR and in subsequent inquiry, his name cropped up. Investigation is complete and the case is continuing for last 18 years. In addition to the facts mentioned above, keeping in view the entirety of facts and circumstances of the case, it is neither a case for custodial interrogation nor pre-trial incarceration.

9. Given the penal provisions imposed and the sentence provided by the Legislature, the nature of allegations coupled with the fact that the petitioner is a first offender, one of the relevant factors would be to provide an opportunity to course correct.

10. 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 when considering the question of jail. So also, the heinousness of the crime. In *GudikantiNarasimhulu 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.

11. 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.

12. 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.

13. 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.

14. 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 Investigator or SHO, in case prosecution already launched in that case to the satisfaction of concerned trial 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 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)	

15. 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.

16. 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.

17. 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.

18. 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 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."

19. 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.

20. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide victim a sense of security. 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.

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

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

20.01.2024
Jyoti Sharma

Whether speaking/reasoned:	Yes
Whether reportable:	No.