

2024:PHHC:161701



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM M-8508 of 2024
Date of Decision: 03.12.2024**

Vijay Panghal and another ...Petitioners
Versus
State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gautam Kaile, Advocate, for the petitioners.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 25.01.2024 (Annexure P-2) passed by the Court of District and Sessions Judge, Hisar, “only to the extent of imposing the condition on the petitioners that they would deposit the amount of fine prescribed under the law, for violating the Mining Rules”.
2. Learned counsel for the petitioners contends that the FIR in the present case was registered on the basis of the complaint filed by Rajesh Kumar, Mining Officer, Mines and Geology Department, Hisar, Azad Nagar, Hisar, Haryana. In fact, the petitioner had been falsely implicated by the police in the present case. The petitioner No. 1 was the registered owner of the vehicle, whereas the petitioner

No. 2 was the driver of the vehicle in question. Both the petitioners filed a petition for grant of anticipatory bail and vide the impugned order dated 25.01.2024, both the petitioners were granted the concession of anticipatory bail by the Court of Sessions Judge, Hisar correctly. However, a condition was imposed wrongly that they would deposit the amount of fine prescribed under the law, for violating the Mining Rules. Learned counsel for the petitioners vehemently submits that the said condition is unreasonable and onerous and may be ordered to be set aside.

3. On the other hand, learned State counsel opposed the submissions made by the petitioners on the ground that the condition had been rightly imposed on the petitioners and the petition is liable to be dismissed.

4. I have heard the learned counsel for the parties and perused the record.

5. Section 438 Cr.P.C. provides for the provisions of law for grant of concession of anticipatory bail to an accused and the same has been reproduced below:-

"438. Direction for grant of bail to person apprehending arrest.-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and

that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and*
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.*

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub- section or has rejected the application for grant of anticipatory bail, it shall be open to an officer incharge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The present of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on

an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer incharge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)."

6. Similarly, Section 437(3) of Code of Criminal Procedure provides that when a person accused or suspected of commission of offence punishable with imprisonment which may extend to 07 years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII or the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence is released on bail under sub Section (1), the Court can impose the following conditions:-

“(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary”.

7. From a cumulative reading of provisions of Section 438(2) and Section 437(3) of Cr.P.C., it is discernible that the Court can impose necessary, just and reasonable conditions while enlarging an accused on bail, having regard to the facts and circumstances of the case. Any other condition not specified under the provisions of Section 438 Cr.P.C. may also be imposed by the Court, but the other conditions, which may be imposed, must be *ejusdem generis* as the

condition specified under Section 438 Cr.P.C. The Court must exercise such discretion judicially and to advance the case of justice.

8. A similar issue came up for hearing before the Hon'ble Supreme Court in the matter of ***Ramesh Kumar Vs. the State of NCT of Delhi***, 2023 AIR (Supreme Court) 3484, wherein, it has been held as follows:-

“In Dilip Singh vs. State of Madhya Pradesh (2021) 2 SCC 779, this Court sounded a note of caution in the following words:

“3. By imposing the condition of deposit of Rs 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character,

behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”

25. Yet again in **Bimla Tiwari vs. State of Bihar (2023) SCC Online SC 51**, this is what the Court said:

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.”

26. Law regarding exercise of discretion while granting a prayer for bail under section 438 of the Cr. PC having been authoritatively laid down by this Court, we cannot but disapprove the imposition of a condition of the nature under challenge. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such connivance) has cheated the complainants, the investigation is yet to result in a charge-sheet being filed under section 173(2) of the Cr. PC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of section 438 of the Cr. PC does empower the high court or the court of sessions to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case and such direction may include the conditions as in clauses (i) to (iv) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of

investigation/trial and safety of the community assume relevance. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail. We may, however, not be understood to have laid down the law that in no case should willingness to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the concerned court to consider whether in the larger public interest the money misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefor. We are minded to think that this approach would be in the larger interest of the community. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating”.

9. Similarly, the Hon’ble Supreme Court has held in the matter of ***Munish Bhasin and others Vs. State (Government of NCT***

of Delhi) and another, reported in [(2009) 4 East Cr. C 122: 2009) 4 SCC 45] as under:-

"12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.

13. In the instant case, the question before the Court was whether having regard to the averments made by Ms Renuka in her complaint, the appellant and his parents were entitled to bail under Section 438 of the Code. When the High Court had found that a case for grant of bail under Section 438 was made out, it was not open to the Court to direct the appellant to pay Rs 3,00,000 for past maintenance and a sum of Rs 12,500/- per month as future maintenance to his wife and child. In a proceeding under Section 438 of the Code, the Court would not be justified in awarding maintenance to the wife and child.

14. The case of the appellant is that his wife Renuka is employed and receiving a handsome salary and therefore is not entitled to maintenance. Normally, the question of grant of maintenance should be left to be decided by the competent court in an appropriate proceedings where the parties can adduce evidence in support of their respective case, after which liability of husband to pay maintenance could be determined and appropriate order

would be passed directing the husband to pay amount of maintenance to his wife. The record of the instant case indicates that the wife of the appellant has already approached the appropriate court for grant of maintenance and therefore the High Court should have refrained from granting maintenance to the wife and child of the appellant while exercising powers under Section 438 of the Code. The condition imposed by the High Court directing the appellant to pay a sum of Rs 12,500 per month as maintenance to his wife and child is onerous, unwarranted and is liable to be set aside."

10. In the matter of **Amarjeet Singh vs. State of NCT of Delhi** reported in [(2009) 13 SCC 769], the Hon'ble Supreme Court held as under:-

"7. Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs 15 lakhs in the form of FDR in the trial court is an unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the appellant-accused."

11. Similarly, in the matter of **Sumit Mehta vs. State (NCT of Delhi)** reported in [(2013) 15 SCC 570], the Hon'ble Supreme Court in paras 14 and 15 ruled as under:-

"14. Thus, in the case on hand, fixed deposit of Rs. 1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant

of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams, etc.

15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."

12. From the above referred judgments passed by the Hon'ble Supreme Court, it is abundantly clear that the Hon'ble Supreme Court of India has always deprecated imposing of onerous conditions, while granting the benefit of anticipatory bail to the accused.

13. In the present case also, the Sessions Judge had wrongly imposed the condition of depositing the amount of fine prescribed under the law for violation of the Mining Rules as the criminal

proceedings are not meant for realization of disputed dues. Still further, the Hon’ble Supreme Court has held in number of judgments that the bail proceedings can never be taken like money recovery proceedings and such onerous conditions should not be imposed.

14. In view of the law laid down by the Hon’ble Suprme Court of India, the present petition is allowed and the impugned order dated 25.01.2024 passed by the Court of Sessions Judge, Hisar, is set aside only to the extent of imposing conditions on the petitioners that they would deposit the amount of fine prescribed under the law for violating the Mining Rules. Rest of the order shall remain same.

15. The petition is allowed in the above terms.

03.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No