

104

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

**CRM-M-13361-2024 (O&M)
Date of decision : 20.03.2024**

Sukhchain Singh @ Kaka

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Gursimran Singh Bhatia, Advocate,
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab,
assisted by ASI Jagdeep Singh.

MAHABIR SINGH SINDHU, J.

Petition under Section 438 of the Code of Criminal Procedure, 1973 has been filed for grant of pre-arrest bail to the petitioner in FIR No.0070 dated 22.05.2018, under Section 61 of the Excise At, 1914, registered at Police Station Majitha, District Amritsar Rural.

2. Allegations are that 15 bottles of illicit liquor were recovered from the petitioner.

3. Contends that the Coordinate Bench granted interim bail to petitioner on 15.03.2024 and in terms thereof, he has already joined the investigation and his custodial interrogation is not required.

4. Above factual position is duly acknowledged by learned State Counsel, on instructions from the police officer present in Court

and further stated that custodial interrogation of the petitioner is not required at this stage.

5. Heard learned counsel for the parties and perused the paper-book.

6. It is an admitted position that petitioner was granted interim bail by the Coordinate Bench on 15.03.2024 and relevant part of the same is recapitulated as under:-

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<i>FIR No.</i>	<i>Dated</i>	<i>Police Station</i>	<i>Sections</i>
70	22.05.2018	Majitha, Amritsar Rural	61 of Excise Act

1. The petitioner apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC by filing second application seeking anticipatory bail. Counsel for the petitioner submits that first bail petition was withdrawn.
2. In paragraph 10 of the bail application, the accused declares the following criminal antecedents:

<i>Sr. No.</i>	<i>FIR No.</i>	<i>Year</i>	<i>Offences</i>	<i>Police Station</i>
1.	29	2009	61/1/14 of Excise Act	Kathunangal
2.	118	2018	61/1/14 of Excise Act	Majitha
3.	128	2019	61/1/14 of Excise Act	----
4.	127	2020	61/1/14 of Excise Act	Majitha
5.	214	2020	61/1/14 of Excise Act	Majitha
6.	126	2022	61/1/14 of Excise Act	Majitha
7.	5	2022	61/1/14 of Excise Act	Majitha
8.	137	2023	61/1/14 of Excise Act	Majitha

3. Petitioner's counsel prays for bail by imposing any stringent conditions and states that they would have no objection to the conditions, i.e., surrender of weapons, and 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. He seeks interim bail in the meantime.

4. *While opposing the bail, the State's counsel contends that given the criminal past, the accused is likely to indulge in crime once released on interim bail.*

5. *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.

6. *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.*

7. *The allegations are 15 bottles of illicit liquor was recovered from the disclosed place in the secret information and petitioner managed to run away from the spot.*

8. *Given the sentence prescribed, the nature of evidence, and other factors particularly FIR relates to year 2018 and investigator did not arrest petitioner till date 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 4*

of the bail petition reveals sufficient grounds for granting interim bail.

9. *In the present case, the maximum sentence imposable for the offences mentioned in FIR does not exceed seven years. Thus, directions passed in Arnesh Kumar v. State of Bihar, 2014:INSC:463 [Para 13], (2014) 8 SCC 273, (Para 13), apply to this petition, wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest the accused automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.*

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 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.*

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 interim 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.*

12. *This interim shall continue only till the disposal of the petition. However, if the petition is allowed, then it shall continue for the entire trial, subject to the terms and conditions mentioned in the order.*

13. *In Madhu Tanwar and Anr. 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 interim 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, 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 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 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.	<i>AADHAR number</i>	
2.	<i>Passport number, (If available), when the attesting officer/court thinks appropriate or considers the accused as a flight risk.</i>	
3.	<i>Mobile number (If available)</i>	
4.	<i>E-Mail id (If available)</i>	

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 or in earlier orders. 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 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.”

19. *Given the background of allegations against the petitioner, it becomes paramount to protect the victim, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within ten days from today and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offence.*

20.. *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.

21. *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 behavior, 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 mend his ways.***

22. *The conditions mentioned above imposed by this court are to endeavor that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. 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."*

23. *All terms of this bail order shall be explained to the applicant in a language they can comprehend by the applicant's advocate and the officer in whose presence the applicant signs personal bonds.*

24. *If the petitioner finds the bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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.

25. *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.*

26. *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.*

27. *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.*

28. *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.*

List on 20.03.2024. *Status report/response/instructions be filed in the meantime..”*

7. It is acknowledged by learned State counsel that in pursuance of above order, petitioner has joined the investigation and his custodial interrogation is not required at this stage.

8. In view of above, interim order dated 15.03.2024 is made absolute subject to the conditions as envisaged under Section 438(2)

Cr.P.C.

9. It is also made clear that petitioner shall fully co-operate with the Investigating Officer as and when called for further investigation.
10. The above observations may not be construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.
11. Disposed off accordingly.
12. Pending application(s), if any, shall also stand disposed off.

20.03.2024
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No