

IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

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CRM-M No. 16197 of 2024

Date of Decision: 15.07.2024

Vishal Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amit Arora, Advocate for the petitioner.

Mr. G.S.Bhullar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
1	31.01.2024	Vigilance Bureau, Range Amritsar, District Amritsar	7 of Prevention of Corruption Act, 1988 (as amended by PC(Amendment) Act, 2018

1. The petitioner(s) apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 08.04.2024, the petitioner’s arrest was stayed by this court, which is continuing till date.
3. In paragraph 23 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	19	04.07.2023	7 of Prevention of Corruption Act, 1988 (as amended by PC(Amendment) Act, 2018	Vigilance Bureau, Range Amritsar, District Amritsar

4. Facts of the case are being taken from reply dated 11.04.2024, which reads as follows:-



No. 01 dated 31.01.2024 was registered against the petitioner on the direction of the Senior Superintendent of Police, Vigilance Bureau, Range Amritsar after obtaining a legal opinion from the Deputy District Attorney (Legal), Vigilance Bureau, Amritsar pursuant to the suggestion made by deponent after approving the findings of the detailed enquiry report dated 31.01.2024 submitted by the Inspector, Vigilance Bureau, Unit Amritsar after verifying the allegations of Major Singh son of Bakhsish Singh resident of Pati Behniwal, village Sultanwind, District Amritsar made by him in his complaint No. 152646 dated 10.01.2024 on the Anti Corruption Helpline of the Vigilance Bureau, Punjab alleging therein that the petitioner being accountant of the Improvement Trust, Amritsar had taken illegal gratification of Rs. 15 lakh from him for release of enhanced compensation amount for the acquisition of his land.

5. That after the receipt of the aforesaid complaint, the office of the Chief Director, Vigilance Bureau, Punjab forwarded the same to the office of the Senior Superintendent of Police, Vigilance Bureau, Range Amritsar for the verification of the allegations made by the complainant Major Singh and submission of a detailed report thereafter. The Senior Superintendent of Police, Vigilance Bureau, Range Amritsar entrusted the enquiry of the aforesaid complaint to the office of the deponent for the verification of the allegations of the complainant and submit a detailed report thereafter in his office.

Role of the petitioner and evidence against him:-

6. That after verifying the allegations of the complainant Major Singh by conducting an enquiry, the Inspector, Vigilance Bureau, Unit Amritsar submitted a detailed enquiry report dated 31.01.2024 in the office of the deponent reporting therein during *the enquiry, it has been found that in the year 1998, the Improvement Trust, Amritsar has acquired land measuring 08 acres situated at village Sultanwind, Amritsar owned by the father and uncles of the complainant namely Bakhsish Singh, Jagjit Singh and Harjit Singh by paying of compensation, which was further enhanced to the tune of 20% by the President, Land Acquisition Claims Tribunal, Amritsar vide Award dated 04.05.2019. It was further found that the complainant Major Singh had approached the petitioner many times for the release of the enhanced compensation amount many times but he raised a demand of payment of Rs.45 lacs as illegal gratification/bribe for the issuance of the cheque of the compensation amount but remain adamant not to release the cheque without payment of the aforesaid bribe amount.*



It was further reported that during the enquiry, it was found that the petitioner had received a total of Rs. 30 lakh from the complainant Major Singh at different dates, which were paid by Major Singh after withdrawing from the accounts of his father and uncles and the petitioner remained adamant to take remaining amount of Rs. 15 lakh from him and thereafter, after taking Rs. 15 lakh in cash from him (Major Singh) outside the building of Improvement Trust, Amritsar, the petitioner handed over three cheques of compensation amount of Rs. 34,47,126/- each in the names of his father Bakhsish Singh and uncles Jagjit Singh and Harjit Singh. The complainant Major Singh presented an audio recording relating to the conversation between him and the petitioner with respect to exchange of the bribe amount during the course of the enquiry proceedings. Thus, it was proved during the aforesaid enquiry that the petitioner had demanded and taken Rs. 45 lakh from the complainant Major Singh as illegal gratification/bribe for the release of the enhanced compensation for the acquisition of the land owned by his father and uncles.”

5. Counsel for the petitioner submits that he would have no objection in case any stringent conditions this Court might put upon the petitioner.

6. State’s counsel opposes the bail.

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. At the time of registration of present FIR, petitioner was already in Central Jail, Amritsar in another FIR No.19 dated 04.07.2023, registered under Section 7 of PC Act 1988 and despite such easy availability, the investigator and his superior officers chose not to arrest the petitioner. Even as per para 8 of the reply, it has been mentioned about the petitioner's custody in the aforesaid FIR. Even Investigating Officer had sought police custody of the petitioner which had been allowed but they could not take his custody because his treatment was going on in the hospital. Although such application was filed way back on 02.02.2024 and after that the petitioner was released on bail in the said case for the reason that the present petition has been filed on 01.04.2024 and bears signatures of the petitioner on affidavit dated 01.01.2024 implying that he was not in jail on that day. It means that the investigator and his superior officers actually never intended to arrest the petitioner. However in para 9 of the reply, it has been mentioned that they want to investigate him to recover bribe amount of Rs.45 lacs. Surprisingly, at all the stages, it was convenient for the investigator and superior officers to arrest the petitioner but they failed to do so, as such, the Investigator is not entitled to the petitioner's custodial interrogation to effect recovery. However, this Court is inclined to grant the bail for the aforesaid reason but subject to the strict conditions that petitioner shall join investigation as and when called upon to do so, within seven days also from today.

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

11. 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 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.

12. 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.

13. 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.



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.

15. 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/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.	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)	

16. *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.

17. 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.

18. 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.

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. 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.**

21. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence. 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."

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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

15.07.2024
Rajeev (rvs)/anju rani

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