

CRM-M-16971-2024
Decided on: 29.04.2024

Anil Sharma ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
63	06.02.2023	Palam Vihar, Gurgaon, District Gurugram	420, 120-B, 506 & 406 IPC and Section 7& 13-B of PC Act added later on

1. The petitioner incarcerated in the FIR captioned above, has come up before this Court under Section 439 seeking bail.

2. As per the custody certificate dated 25.04.2024 filed by the State, one case is pending against the petitioner, detail of which is as under:-

Sr. No.	FIR No.	Date	Offences	Police Station
1	316	06.11.2023	406, 506, 420,120B IPC	17/18, Gurgaon, District Gurgaon

3. Petitioner's counsel prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other mobile numbers. The petitioner contends that the further 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 is not entitled to any bail. The State's counsel further contends that given the criminal past, the accused is likely to indulge in crime once released on 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. Prosecution's case is being taken from reply dated 26.04.2024, which reads as follows:-

"1. That the deponent is posted as Assistant Commissioner of Police, Udyog, Gurugram and is swearing the present affidavit in his official capacity. The contents of the affidavit are based on the official record pertaining to case FIR No. 63 dated 06.02.2023 registered at Police Station Palam Vihar, District Gurugram, for the commission of offences punishable under Sections 406, 420, 120-B of IPC and Section 7/13B, 8 of PC Act which the deponent believes to be true and correct.

2. That the petitioner, who is an accused in the FIR aforementioned, by way of filing the afore captioned petition, has invoked the jurisdiction vesting in this Hon'ble Court by virtue of provisions of Section 439 Cr.P.C., seeking grant of concession of regular bail to him, being in custody since 07.02.2024.

3. That the factual backdrop of the case in hand is that the present case a complaint was submitted by one Praveen Kumar alleging therein that he was having 12 acres of land in Faridabad and the same was the joint ownership of the complainant and his two brothers. It was further averred that the said land had been sold by the brothers of the complainant to Durga Builders and had got sanctioned the plan in the year 1990 after executing the agreement. However,

when the zamindar came to know about the same, he took action against Durga Builders. The case was heard in the Court of SDM Faridabad and Ld. Court at Faridabad and the same was decided in favour of the complainant. It was further averred that the Tehsildar got the possession handed over to the complainant. However, when the complainant went to the site for taking possession of the land in question, the DTP came there and told that the said land fell in his plan and asked the complainant to get the land removed from the DTP plan and to thereafter take the possession. It was further averred that the complainant submitted an application in the concerned department at Chandigarh and he had apprised about his case to Anil, the petitioner herein and the co-accused Sandeep. It was further averred that the co-accused Sandeep told the complainant that he will get the work done in 10 days, and asked for Rs.25 Lakhs as upfront payment. It was further averred that the co-accused Sandeep asserted that he was posted at CM Window and has connections with the officers and being allured, on 20.05.2022, the complainant paid Rs. 15 Lakhs to the co-accused Sandeep. It was further averred that the complainant had also apprised Anil about the same telephonically. The complainant had further paid Rs.10 Lakhs to the co-accused Sandeep and Anil on 24.05.2022 and had told the co-accused Sandeep that he did not trust Anil and asked the co-accused Sandeep to keep the money until the work is done. It was further averred by the complainant that the kept saying that the date will be fixed at Chandigarh, but no date was ever fixed, upon which the complainant got suspicious and demanded his money back. However, the co-accused Sandeep kept on dodging the matter and kept on assuring that the needful shall be done and kept on delaying the return of the money. Later on, when the complainant met them, the co-accused Sandeep and the accused denied having received any money and also threatened to kill him, implicate in false cases and to get his children kidnapped. Complainant further asserted that he was having audio recordings with the co-accused Sandeep. Legal action was sought against the culprits. On the basis of these allegations, the FIR aforementioned was registered and investigations were taken up in the matter.

4. That the complainant Praveen Kumar was also joined in the investigation. He stated that he gave the amount of Rs. 71 Lakhs to Sukhbir Malik, who assured that the agreement of the land will be executed as and when the land is ousted from the plan of DTP Faridabad. The complainant thereafter talked to Anil Sharma for getting the work done, who gave the reference of the present co-accused Sandeep, who was employed in CM Window Cell in the office of DCP West, Gurugram. The complainant met the co-accused Sandeep, who assured him to get the work done and stated that the amount of Rs.1.25 crores will have to be paid and Rs.25 Lakhs will have to be paid upfront and having been allured, on 20.05.2022, the complainant gave Rs.15 Lakhs and on 24.05.2022 he gave Rs.10 Lakhs to the co-accused Sandeep. Thereafter, co-accused Sandeep failed to get the work done and the complainant demanded back his money and the co-accused Sandeep refused to return same and rather he criminally intimidated him. The complainant submitted a complaint in the office of ACP Udyog, Gurugram, due to which Sandeep requested Anil to give an affidavit to take all the blame upon himself, so that the co-accused Sandeep's job could be saved, and as such, Anil gave an affidavit declaring that he had obtained an amount of Rs.25 Lacs from the complainant for getting the work done relating to land, counsel fees and other expenses and no one was having any concern with the amount taken by him. He further apprised that co-accused Sandeep had also obtained the signatures of Anil on 7-8 blank papers.

5. That during the course of investigation, the legal opinion of the Law Officer, posted with the Office of Commissioner of Police, Gurugram was ☐ obtained and as per his opinion, offences punishable under Sections 7, 13(B) of A Prevention of Corruption Act, 1988 were added to the case.

6. That the co-accused Sandeep joined investigations of the case on 09.05.2023 in pursuance of the notice u/s 41(1) Cr.P.C. but he did not cooperate. The co-accused Sandeep has admitted the receipt of the amount of Rs. 25 lakhs in the video recording.

7. That on 07.02.2024, the petitioner herein was arrested upon receipt of

appropriate incriminating evidence against him. He was interrogated while being in custody and on the basis of the disclosure SO made by the petitioner, offences punishable under Sections 406 of IPC and 8 of the Prevention of Corruption Act, 1988 were added to the case.

8. That the post the dismissal of his anticipatory bail application by the Hon'ble Supreme Court of India, the accused Sandeep surrendered before the Court on 24.02.2024. he was joined in investigation in the case and was arrested on the receipt of appropriate incriminating evidence against him. He was interrogated while being in custody and upon interrogation he suffered his disclosure statement conceding his involvement in the present crime. He conceded having received sum of Rs.25 Lakh however, he did not get recovered even a single penny in the case.

9. That during the course of further investigation, the video prepared by the complainant depicting co-accused Sandeep being in conversation with the complainant, and further conceding the fact of having accepted the money from the complainant was taken into possession along with the mobile phone used by the complainant to prepare the same. The true translated reproduction of the videos are being appended to herewith for the kind perusal of the Hon'ble Court as Annexure R-1 & R-2.

10. That consequent upon the completion of the investigation of the case, final report dated 03.04.2024 has been put in court of competent jurisdiction on 06.04.2024 and now the case is fixed for 08.05.2024 for further proceedings.

11. That as per the investigations conducted by the local police, the petitioner had played a pivotal role in the commission of the crime complained of. He had befriended co-accused Sandeep, who was working as a constable and was posted in the office of the DCP, West, Gurugram. The complainant was also his previous acquaintance. He had introduced Sandeep with the complainant who wanted to get his land measuring 4 Acres ousted from the site plan. Consequent upon the said meeting, the complainant was induced by Sandeep and a deal was struck at Rs. 25 Lakh and on 25.05.2022 the petitioner had accompanied accused Sandeep and both of them had collected Rs.10 Lakh cash from the complainant. The accused Sandeep had paid an amount of Rs.50,000 to the petitioner out of the Rs.25 lakh received by him. The said facts have been duly conceded by the petitioner in his disclosure statement. Further, the telephonic conversation between the complainant and the petitioner also shows that the petitioner was privy to the fact of the striking of the deal as done by the co-accused Sandeep Kumar. The co-accused Sandeep has also conceded to the facts aforementioned. The true translated reproduction of the transcript of phone call and the Call Detail Records between the petitioner and the complainant are being appended to herewith for the kind perusal of the Hon'ble Court as Annexure R-3 & R-4 respectively.

12. That the petitioner is accused of commission of a serious offence. He was the person who had introduced the complainant with the co-accused Sandeep. He had also received a sum of Rs.50,000 from the co-accused. It is the law well settled that the gravity of the offence should be a prime consideration while adjudicating upon the aspect of grant of concession of bail. The prosecution evidence is yet to be recorded. The petitioner may very well pressurize the witnesses or may flee from justice in the event of being granted the concession of regular bail. It is to be appreciated at this juncture that apart from the present case the petitioner has also been involved in the commission of a similar crime along with the co-accused Sandeep, in terms of FIR No. 316 dated 06.11.2023 registered at PS Sector 18, Gurugram for commission of offences punishable under Sections 406, 506, 420, 120-B of IPC and 7, 8 and 13 of the - Prevention of Corruption Act, 1988. The copy of custody certificate of the petitioner is being appended to herewith for the kind perusal of the Hon'ble Court as Annexure R-5.

In view of the aforementioned facts and attending circumstances of the case, it is most respectfully prayed that the present petition may kindly be dismissed, being devoid of any merits, in the interest of justice."

8. As per paragraph 8 of the bail petition, the petitioner is in custody since 09.02.2024. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

9. In *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40, Supreme Court holds,

[28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

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.

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 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. 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.

13. 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 court, and in case of non-availability, to any 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 the 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)	

14. 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.

15. 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.

16. 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 prison. 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."

17. 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.

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

19. 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.

20. 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.

21. 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.
22. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
23. *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

29.04.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.