

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.27298 of 2024
Date of Decision: 19.07.2024

Om Dutt Sharma ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Raman Sihag, Advocate and
Mr. Neeraj Sansaniwal, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
09	25.08.2022	SVB Panchkula, Haryana	379, 414, 420 IPC; 4/21 of Mines and Minerals (Development & Regulation) Act, 1957 and 13(2), 13(1) (a) of Prevention of Corruption Act, 1988 (120-B, 406, 409 IPC added later on)

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 25 of the bail application, the accused declares that he has no criminal antecedents.
3. Vide order dated 27.05.2024, this Court had stayed the arrest of the petitioner, and the said order is continuing till date.
4. The prosecution case is being taken from the reply dated 05.07.2024 filed by the concerned Deputy Superintendent of Police, which reads as follows:

“1. That there was source information to the effect that Government Revenue such as GST (CGST/SGST) & Royalty is being evaded by way of taking material from the mine at Ratewali, Panchkula in Trucks/Dumpers without issuing any bills and mining beyond



permissible limit by M/s Tirupati Roadways Mine at village Ratewali. In order to verify the said source information, a team was formed who conducted Surprise Check on the site of M/s Tirupati Roadways Mine at village Ratewali on 11.05.2022. During the said check, relevant record/documents and data from the computers/desktops relating to bills i.e. E- Rawana bills etc. was seized. Perusal/scrutiny of the said record/data collected during the said Surprise Check by the team of Anti Corruption Bureau, Panchkula revealed that during the period of 06 days from 05.05.2022 to 11.05.2022, a total number of 1868 Trucks/Dumpers were found to have been taken out the material/mineral (i.e. Graval, Sand, Stone etc.) from the Mining Site of M/s Tirupati Roadway Mine. Whereas, bills mentioning CGST/SGST and Royalty etc. of only 518 Trucks/Dumper were found to be issued.

2. That in order to further ascertain the amount of illegal extraction of material/minerals, a survey/measurement was carried out with the help of officers/officers of HARSAC, Gurugram and the Mining Deptt., Haryana, Panchkula M/s Tirupati Roadways at Ratewali, Panchkula, Haryana on 13.05.2022 at the site of Mine in presence of officers of District Mining and Department Mining & Geology, Haryana to verify as to how much volume of material has been extracted from the said river/mine. Vide report No. HARSAC/GGM/2022/203-205 dated 06.06.2022 of the Principal Scientist, HARSAC, Gurugram the total volume extracted was reported to be 47,66,079.68 MT (47.66 LTPA) which as per the terms and conditions of tender comes out to be 5 - 6 times more than the permissible range (which comes about only 14-16 MT within the period of starting of mining operation of less than 2 years after the allotment of tender to the accused firm M/s Triputi Roadways.

3. That as per clause 21 (A) of the Specific Conditions of Environment Clearance letter No.J-11015/75/2017-IA. II(M) dated 21.02.2020 issued to M/s Tirupati Roadways, Rattewali, Panchkula, the permissible mining of river bed material (Boulder, Gravel and Sand) shall be limited to only 8.39 LTPA (8390000 MT) instead of requested 19 LTPA from an effective minable area of 24.25 Ha with a maximum minable depth of 1.33 Meters from the original ground level.

4. That as established, the total volume of material extracted by the owner of the firm M/s Tirupati Roadways at Rattewali, was 5-6 times more than the permissible limit in a year. Thus, a huge loss of about



Rs.35 Crores of revenue has been caused to the Government of Haryana by the owners of said firm by violating rules and without issuing bills of Royalty and extracting huge amount of material beyond the permissible range.

5. That in order to further ascertain the role of officers/officials of the mining department and to crack the whole conspiracy in the matter, a detailed report was sent to the Chief Secretary, Government of Haryana, Vigilance Department, Chandigarh for registration of criminal case under section 420, 379, 414 of IPC and section 4/21 of Mines and Mineral (Development and Regulatory) Act 1957 (MMDR Act 1957) and 13 (1) (a) r/w 13(2) of PC Act against owners of the said firm and the unknown Government servants of Mining Department Panchkula office. On receipt of permission of the Competent Authority i.e. Chief Secretary, Govt. of Haryana, Vigilance Department vide order Endorsement No. 32/12/2022-4VI dated 16.08.2022 and further order issued vide endorsement 13345/1-1/SVB(H) dated 18.08.2022 of the DG/SVB/ Haryana an FIR No.09 dated 25.08.2022, under section 420, 379, 414 of IPC and section 4/21 of Mines and Mineral (Development and Regulatory) Act 1957 (MMDR Act 1957) and 13 (2) r/w 13(1)(a) of PC Act has been registered in the present case against the owners of the said firm and the unknown public servants of Mining Department of Panchkula and investigation is going on.

6. That during investigation, record relating to execution of mining contract executed between the Government of Haryana and M/s Tirupati Roadways and other relevant documents are obtained from the concerned which revealed that on 04.12.2018, the mining contract was executed between the Government of Haryana and M/s Tirupati Roadways through its authorized signatory Gurpreet Singh Sabarwal, (duly authorized by his father Sh. Lakhmir Singh bharwal as per the Power of Attorney dated 19.08.2017)."

5. Petitioner's counsel submits that the petitioner has voluntarily complied with the undertakings mentioned in the order dated 27.05.2024 passed by this Court, he had handed over the affidavits to the Investigator and it is submitted that he shall not claim such declaration as self incrimination, violative of Article 20/21 of Constitution of India or any other fundamental right/law. The investigator may verify such assets if required and proceed in accordance with law, if any anomalies found. The concerned investigator is



further directed to forward one original copy of the affidavit to the petitioner's employer within two weeks from today.

6. Petitioner's counsel further prays for bail by imposing any stringent conditions and further contends that custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

7. The state's counsel opposes the bail and states that considering the allegations, the petitioner's custodial interrogation is necessary.

8. 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, and one of the relevant factors would be to provide an opportunity to course correct. Even a prima facie perusal of paragraph 9 of the bail petition needs consideration for bail.

9. 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.

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 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 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/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 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)	

14. 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.

15. 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.

16. 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.

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. 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.**

19. The conditions mentioned above imposed by this Court are to endeavour that the accused does not repeat the offence and to provide an opportunity to the victim to consider legal remedies for recovery of the amount. 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."

20. 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.

21. 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.

22. 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.

23. 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,



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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.

24. 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.

25. *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

19.07.2024

Sonia Puri

Whether speaking/reasoned:	Yes
Whether reportable:	No.