

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28528-2024
Reserved on: 17.07.2024
Pronounced on: 29.07.2024

Suresh Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Akshit Mehta, Advocate
for the petitioner.

Mr. Gurpartap S. Bhullar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
25	26.09.2023	Vigilance Bureau Range, Ferozepur	13(1) (a) r/w 13(2) of PC (Amendment) Act, 2018 and 409, 420, 467, 468, 471, 120-B IPC

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 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner contends that custodial interrogation and 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's custodial interrogation is necessary.
5. Facts of the case are being taken from reply dated 05.07.2024 filed by concerned DySP which reads as under:-

“1. That FIR in question was registered after thorough enquiry against present petitioner, who was the then Inspector Pungrain, Incharge Kharid Kender Ferozeshah, Hardev Singh Proprietor M/S Happy

Commission Agents, Pawan Kumar Proprietor of M/S Dhaliwal Trading Company, Iqbal Singh Proprietor of M/S Gill Trading Company, Balraj Singh the then District Food Supply Controller and Balraj Singh Inspector/Incharge Godown Talwandi Bhai, village Lalley and Village Haraj for committing fraud with Pungrain department as the petitioner in connivance with other accused showing bogus purchase of 13134 bags of wheat i.e. 3698 bags of wheat by M/S Happy Commission Agents, 2200 bags of wheat by M/S Dhaliwal Trading Company and 7236 bags of wheat by M/S Gill Trading Company. Further on the basis of bogus purchase, department paid a sum of Rs. 1,13,93,745/- to the above named commission agents. The translated copy of FIR has already been attached by petitioner with the petition as Annexure P-1, in which the detail enquiry has been mentioned.

2. *That in the present FIR, Suresh Kumar petitioner posted as Inspector/Incharge of Kharid Kender Ferozeshah of Pungrain department for the purchase of wheat for the year 2018. Role of petitioner is as under:*

a) Petitioner who was posted as inspector/incharge Kharid Kender Ferozeshah showing bogus purchase by preparing forged bill, gate pass, Form-I etc of wheat bags in connivance with proprietors of above mentioned three commission agents and on the basis of forged bill and gate passes prepared by petitioner in connivance with other accused, department made payment of Rs.1,13,93,745/- i.e. in the different bank accounts of above said commission agents.”

6. Petitioner seeks bail on the ground that there is a delay of 05 years in filing the FIR and four similarly placed Inspectors namely Iqbal Singh, Balraj Singh, Hardev Singh and Balraj Singh, DFSC, Ferozepur, are already on anticipatory bail and the petitioner is entitled to bail on parity. Counsel for the petitioner submits that the FIR has been registered because the petitioner is raising voice against the malpractices going on in the department.

7. An analysis of the above said arguments would lead to the following outcome. Although there is prima facie evidence connecting the petitioner with the commission of

offence, but this Court is neither dealing with stage of framing of charges or final trial but grant of anticipatory bail where the parameters are altogether different.

8. State opposes the bail and refers to para no.3(i) of the reply which reads as under:-

“3. That during investigation of the case, following evidence came on record against petitioner which is as under:

i) When the physical verification of different godowns of pungrain department situated at Talwandi Bhai, Lalley and Haraj conducted in the year 2018 by the joint checking team of the department then the short fall of 13134 bags of wheat came into the notice of department and in order to cover up and conceal the crime committed by petitioner and others, all the three proprietors of above mentioned commission agency shop returned the amount which was received by them on the basis of bogus purchase and also deposited certain wheat bags with department.”

9. Thus, the entire amount has been recovered and petitioner is a first offender and four similarly placed co-accused have already been granted benefit of anticipatory bail, there is no reason to deny petitioner the same relief.

10. Given the penal provisions imposed and the sentence provided by the Legislature, the nature of the 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 paragraphs 5 and 6 of the bail petition needs consideration for 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 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), the 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, the 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), the 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 bail grant ought not to be so strict as to be incapable of compliance, thereby making the bail grant illusory.

12. 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.

13. 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.

14. 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 a 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 if the concerned Judicial Magistrate is unavailable, go to any other nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must be satisfied 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 a 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)	
----	--------------------------	--

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, the prosecution will be open to seeking 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, or 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. 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. The bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C. if they are not canceled due to non-appearance or breach of conditions.

18. 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.

19. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that 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.

20. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

21. *There would be no need for a certified copy of this order for furnishing bonds, and*

CRM-M-28528-2024

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. If 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 terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.07.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.