

CRM-M-28821-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28821-2024
Reserved on: 08.08.2024
Pronounced on: 30.08.2024

Bal Krishan @ Aman ...Petitioner

Versus

State of UT Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Manish Bansal, PP, UT Chandigarh with
Mr. Shubham Mangla, Advocate for the respondent-UT.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0422	15.11.2023	Sector-36, UT Chandigarh	419, 420, 467, 468, 471 & 120-B IPC

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, has come before this Court under Section 439 of the Code of Criminal Procedure, 1973 (CrPC), seeking bail.
2. As per custody certificate dated 03.07.2024, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1	07	12.01.2024	419, 420, 467, 468, 471, 120-B IPC	Sector-36, Chandigarh
2	23	2017	22 of Prevention of Cruelty to Animal Act	Sadar Ambala (Haryana)

3. Petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. 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

CRM-M-28821-2024

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.

5. 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.

6. Facts of the case are being taken from **reply dated 17.07.2024 filed in CRM-M-28821-2024 (petition filed by co-accused/Arvind Kumar alias Sonu)**, which reads as follows:-

"That the brief facts of the case are that instant case, FIR No. 0422 dated 15.11.2023 under Sections 419/420/467/468/471/120-B of IPC, P.S. Sector-36 Chandigarh, was registered on the basis of written complaint made by the Reader to the Court of Sh. Jaibir Singh, the then Learned Additional Session Judge, Chandigarh, wherein it was alleged that one person Talwinder Kumar appeared before the Ld. Court and tried to furnish his surety/bail bonds, affidavit, Aadhar Card of Talwinder and report pertaining to land valuation report issued by Halqa Patwari for grant of bail to accused Kapil involved in FIR No.98/2023 u/s 397 411of IPC PS-34 and another person Nitin also identified him as Talwinder kumar before the Hon'ble Court. However, during verification, it found that the person presenting himself is not Talwinder Kumar and his original name is Balkrishan @ Aman. Thereafter, both the above said persons were detained and handed over to the police by the Court of Ld. Addl. Sessions Judge, Chandigarh and the instant FIR was registered against the accused persons. Bal Krishan @ Aman and Nitin were arrested from the court. After registration of above said FIR, the investigation was put into motion. During the course of investigation, it came in the disclosure statement of the co-accused petitioner Bal Krishan @ Aman that he was allured by one Lucky, Sonu (present petitioner) and Billa and they asked him to appear as surety for accused Kapil in FIR no. 98/2023 u/s 397,411of IPC PS-34 and they promised him to pay a sum of Rs. 3000/-. He further disclosed that the forged Aadhar card and property papers were also procured by them and subsequently he Balkrishan @ Aman and co-accused Nitin have

CRM-M-28821-2024

submitted forged documents before the Court to get bail for above said accused Kapil.”

7. Petitioner seeks bail on the ground of pre-trial custody and innocence and also on the ground of parity with Arvind Kumar alias Sonu who was granted bail by this Court vide order dated 30.07.2024 passed in CRM-M-32043-2024. However, State opposes the bail.

8. Although there is sufficient evidence connecting the petitioner with the offence but this Court is not considering framing of charges at this stage but is concerned for regular bail. As per paragraph 3 of the bail petition, the petitioner has been in custody since 15.11.2023 and as per custody certificate dated 03.07.2024, he has undergone 07 months & 17 days of custody. Given the penal provisions invoked regarding pre-trial custody, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case and co-accused already released on bail, 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. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for denying 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 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

CRM-M-28821-2024

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 resolved by imposing 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. This order shall come into force from the time it is uploaded on the official webpage of this Court.

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

CRM-M-28821-2024

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 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 court, and in case of non-availability, to any 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, such surety can produce the accused.

OR

(b). The petitioner will hand over to the concerned court a fixed deposit of 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 amount above in favor 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. If the bankers are unwilling to make a Fixed Deposit in such an eventuality, it shall be permissible for the petitioner to prepare an account payee demand draft favoring the 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 must 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.

CRM-M-28821-2024

(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 attests the bond 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, 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.

15. 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.

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

17. *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. 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

30.08.2024

anju rani

Whether speaking/reasoned: Yes

Whether reportable: **No.**