

CRM-M-30259-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30259-2024
Reserved on: 17.07.2024
Pronounced on: 30.07. 2024

Sandeep Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Virender Soni, Advocate for the petitioner.

Mr. Ashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
192	25.05.2023	Arya Nagar Rohtak, District Rohtak, Haryana	7/13 of Prevention of Corruption Act 1988

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 21 of the bail petition, the accused declares that he has no criminal antecedents.
3. Vide order dated 08.07.2024, petitioner’s counsel submitted that in order to demonstrate his honesty he would voluntarily declare all his assets along with his spouse and on this undertaking, petitioner’s arrest was stayed.
4. On 17.07.2024, petitioner’s counsel submitted that the petitioner has voluntarily complied with the order dated 08.07.2024 and handed over the affidavit to the investigator. He further submitted that they would not claim such declaration as self incrimination or violation of their rights under Article 20/21 of Constitution of India, India Evidence Act/Bharatiya Sakashya Adhiniyam 2023 or any other law in force. Petitioner's counsel further 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.

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4. Facts of the case are being taken from the reply dated 05.06.2024, which reads as under:-

"That the facts of the case are that a complaint vide memo no.MCR/OS/2023/5094 dated 19/5/2023 has been received from Commissioner, Municipal Corporation alongwith a copy of departmental inquiry and documents for registration of FIR against petitioner Sandeep Kumar S/o Sh.Rajbir Singh Clerk. In the complaint it has been disclosed that a complaint has been received from Sh.Gulshan Nijhawan regarding demanding of bribe of Rs.5000/- in lieu of resolve the property issue. The matter has been got investigated by Worthy Commissioner, Municipal Corporation, Rohtak through Joint Commissioner, Municipal Corporation, report clears Rohtak The enquiry that all the allegation proving against Sandeep Kumar, Clerk. In this connection, it is requested that FIR against Sandeep Kumar, Clerk may please be lodged and intimate to this office.

3. That alongwith the complaint inquiry was a departmental also submitted by Commissioner Municipal Corporation, Rohtak in which it has been mentioned that regarding charge sheet against Sh. Sandeep Clerk, in compliance with the office order doted 28.02.2023 on the above subject a complete investigation was conducted according to Rule-7 regarding the charge sheet issued to Sh.Sandeep S/o Sh.Rajbir, Clerk. After receipt of complaint dated 27/12/2022 against Sandeep Kumar Clerk regarding demanding a bribe of Rs.5000/- the said employee was suspended with immediate effect in the public interest by the Commissioner's Office through letter number MCR/CMC/2022/8769-75 dated 27.12.2022, and a charge sheet was Issued under Rule 7 vide letter number MCR/CMC/2023/887 dated 25.01.2023. The Inquiry Officer was appointed to investigate the matter. Vide letter number MCR/JC/2023/2549 dated 13.03.2023 Sandeep Kumar was instructed to appear on 20/3/2023 before Inquiry Officer and vide letter No.MCR/JC/2023/2551 dated 13.03.2023, the complainant Shri Gulshan Kumar son of Shrl Brijlal R/o 135/19, Civil Road, Rohtak was also called to record his statement on 22.03.2023 before the Inquiry Officer. Shri Sandeep son of Shri Rajbir, Clerk, recorded his statement on 20.03.2023 in which he has denied the allegations leveled against him and alleged that Gulshan Nijhawan slipped some money into his pocket, because at that time Sandeep (petitioner) was holding a cup of tea and after going in the Geo Lab he informed the colleagues about the incident. The statement of complainant Gulshan Nijhawan was also recorded in which he stated that his letter dated 27/12/2022 be treated as his statement. During inquiry it has been revealed petitioner Sandeep given that the contradictory statements. The report of Presiding Tehsildar (Shri Shiv Kumar) M.C. Rohtak also found that the recovered notes were the same numbers which were disclosed by the complainant in his complaint. On the basis of departmental inquiry the petitioner was found guilty of taking bribe from the complainant Gulshan Nijhawan. On the basis of inquiry report the Commissioner, Municipal Corporation, Rohtak has requested to lodge the FIR against the petitioner. On the basis of said complaint a case vide FIR no.192 dated 25/5/2023 U/s 7, 13 of Prevention of Corruption Act, 1988

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was registered at Police Station-Arya Nagar, Rohtak."

5. Petitioner seeks bail on the ground that as per the allegations in the FIR made by Gulshan Nijhawan against the petitioner and it is alleged that the petitioner demanded a bribe of Rs. 5,000 in lieu of resolving a property issue/change of category of property. To refute this allegation, it is submitted that the petitioner was working as a Clerk in the House Tax Branch, Municipal Council, Rohtak at the relevant time, and he was not competent to perform the work as alleged by Gulshan Nijhawan. It is also submitted that perusal of the FIR reveals that it does not specify the time and place where the illegal bribe was allegedly demanded by the petitioner from Gulshan Nijhawan and no recovery is to be effected from the petitioner. Petitioner's counsel further submits that in pursuance to notice under Section 41-A CrPC, petitioner had appeared two times before the police and joined the investigation and further the petitioner is ready and willing to join investigation. It is also submitted that there is no demand of money and this is a trap done by Gulshan Nijhawan to falsely implicate the petitioner because Chirag and Gulshan Nijhawan and some of the official staff are running a syndicate to do illegal work and the petitioner is an obstacle to their work. Counsel also submits that petitioner is not involved in any other case.

5. Counsel for the State opposes the bail and makes reference to para 4 of the reply, in which it is explicitly mentioned that the petitioner did not join investigation despite issuance of notice under Section 41A CrPC. On this, counsel for the petitioner submits that statement is incorrect and he further undertakes to join investigation as and when called upon to do so and if the petitioner fails to do so, his bail may be cancelled.

6. Considering the amount involved i.e. Rs.5,000/- and despite ample opportunity to the investigator and supervisory officers to arrest the petitioner, they chose not to arrest him, it prima facie indicates that police was never serious in arresting the petitioner and despite ample opportunities, they did not take any effective steps to do so, therefore the petitioner is entitled to bail. 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.

7. 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

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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.

8. 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.

9. 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

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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.

10. 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)	

11. 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.
12. 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.
13. 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

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are not canceled due to non-appearance or breach of conditions.

14. 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.

15. 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.

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

30.07.2024
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Whether speaking/reasoned: Yes
Whether reportable: No.