

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CRM-M-31315-2023
Decided on: 04.03.2024

Sanjay Kumar ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amit Jhanji, Sr. Advocate with
Ms. Nandita Verma, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Prateek Gupta, Advocate
for respondent No.2-CBI.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
RC0512023S0001	17.01.2023	CBI, SCB, Chandigarh	288, 337, 338, 304A, 304 Part ii r/w 35 IPC
Earlier lodged vide FIR No.27 dated 11.02.2022, under Sections 304-A & 34 IPC (Sections 304(ii), 338, 417, 420, 427, 465, 467, 468, 471 & 120B IPC and Sections 10 & 12 of the Haryana Development and Regulation urban Area Act 1975 (Haryana Act No.8 of 1975) were added later on)			

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. Facts of the case are being taken from the FIR which is annexed with the petition and the same reads as follows:-

“To, The SHO P.S. Bajghera Gurugram Sir, It is submitted that I Rajesh Bharadwaj s/o Sh. H.B. Sharma, resident of Flat No. D-203, Chintel Paradesio, Sector-109, Gurugram want to bring to your kind attention that on dt. 10/2 / 22 I got a call from my son Yatharth Bharadwaj that the

ceiling of some floors of our tower has collapsed and fallen and in the incident my wife Ekta (Age 31 Years) Bharadwaj got fatal injuries and passed away at around 07:00 pm I came from office and saw the ceiling of 6 & 7th floors has collapsed. Rescue and police teams were working on the spot and after removal of debris my wife's body was recovered and taken to hospital. This incident has happened due to negligent and substandard Construction work done by MD Chintels Group Mr. Ashok Saloman and Contractor of Construction, there could be more fatalities and injuries to other flat residents of D-tower kindly take the necessary legal action against the above mentioned accused. Thanks Regards SD/- RAJESH BHARADAJ RAJESH BHARADWAJ MO.7073999054 DT-10/2/2022.

POLICE PROCEEDINGS:-

Today, On date 10/2 / 2022 a telephone was received from control room Gurugram at the Police Station informing that ceiling of D- Tower flats in Chintel Paradesio, Sector-109, Gurugram, Bajghera, Gurugram has collapsed. After getting this information ESI/ASI alongwith PSI Pingaksh, HC Bijender No. 41, Constable Mohit 3874 L/CT Rinku 5678 reached the place of incident, Where NDRF, Civil Defense, Fire Brigade, Ambulance, Scene of Crime Team and other high officials were informed about the incident and with the help of the rescue team, the injured Mrs. Ekta Bhardwaj W/O Mr. Rajesh Bhardwaj RIO Flat No. D-203 Chintal Paradiso Sector 109 Gurugram was taken out of the debris in an ambulance and taken to General Hospital Gurugram where Doctor declared the abovesaid Ms. Ekta Bharadwaj dead. Mr. Rajesh Bhardwaj, the husband of the deceased, presented his written complaint, which is being sent to the police station with Constable Mohit No. 3874 by writing an article on the fact that the crime section 304A, 34 IPC is found to have occurred from the essence of the complaint. Case to be registered accordingly and FIR case no. to be informed. ESI/ASI along with other employees involved in further investigation. Location: Government Hospital Sector-10 Gurugram SD/- VIRENDER ESI/ASI Police Station Bajghera District Gurugram dt. 10/02/22 AT-11.30 PM AJ Police Station :- On receipt of the above article at the police station, the above charges or offenses 304 A, 34 IPC have been registered."

4. Petitioner's counsel submits that co-accused-Amit Austin has been granted bail by this Court vide order dated 22.05.2023 passed in CRM-M-7243-2023 and the matter before the trial Court is listed for 05.03.2024 for framing of charges, as such, there is no reason for further pre-trial incarceration. He further prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and within fifteen days undertakes to disconnect all other mobile numbers. The petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. Counsel for the CBI opposes the petition by making reference to the reply dated

26.10.2023. He strenuously and strongly opposes the bail on the ground that the petitioner permitted usage of sub-standard material that caused to collapse of towers leading loss of life and as such he is not entitled to bail. Counsel for the State of Haryana also opposes the bail.

REASONING:

6. It remains undisputed that because of the collapse of towers, not only human life was lost but the savings of so many families were also spoiled because of the sub-standard construction. However the another aspect of the matter is that the petitioner as per custody certificate dated 23.01.2024, petitioner's custody is already of 11 months & 06 days. Thus, in the entirety of facts and circumstances peculiar to the case coupled with the fact that pre-trial custody is of more than one year and the fact that co-accused has been released on bail, there would be no justification for further pre-trial incarceration.

7. As per paragraph 7 of the bail petition, the petitioner is in custody since 17.02.2023. Given the nature of allegations, viz-a-viz pre-trial custody, coupled with 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. Furthermore, the petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course correct.

8. 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 *GudikantiNarasimhulu 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.

9. 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.

10. 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.

11. In *Madhu Tanwar and Anr. 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.

12. 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 attesting officer/court thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

13. The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, 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.

14. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offence.

15. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim and victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

16. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall not enter the property, workplace, and the residence of the victim and shall also not enter within a radius of five-hundred meters from the victim's home till the recording of the statements of all non-official and informal witnesses in the trial. This Court is imposing this condition to rule out any attempt by the accused to incapacitate, influence, or cause any discomfort to the victim. Reference be made to Vikram Singh v Central Bureau of Investigation, 2018 All SCR (CrI.) 458); and Aparna Bhatt v. The State of Madhya Pradesh, **2021:INSC:192**, 2021 SCC Online SC 230.

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 does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. 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. In addition to the above said conditions, one more condition be also complied with i.e. the petitioner shall seek prior permission from this Court, in case he wants to travel abroad.

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 the bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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, 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. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

26. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, without any delay. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police station, the trial court, or even this court.

27. *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

04.03.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.