

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31307-2024
Reserved on: 23.07.2024
Pronounced on: 29.07.2024

Sunny ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mitul Singh Rana, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
26	22.05.2024	Vigilance Bureau, Range Amritsar, District Amritsar	7-A of PC Act, 1988

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. In paragraph 5 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 and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. State opposes the bail.
5. Facts of the case are being taken from short reply dated 22.07.2024 filed by concerned DySP which reads as under:-

“3. That the brief and the relevant facts of the case are that aforesaid FIR No. 26 dated 22.05.2024 was registered against the petitioner on the direction of the Senior Superintendent of Police, Vigilance Bureau, Range Amritsar after taking a legal opinion from the Deputy District Attorney, Vigilance Bureau, Amritsar pursuant to recommendation made by the deponent for the registration of the FIR and investigation of the case against the petitioner and co-accused Kanwarpal Singh (K.P.), Deed Writer, Qadian, District Gurdaspur vide detailed report dated 16.04.2024 submitted in his office after verifying the allegations made by the Complainant Kulwant Singh son of Gurdial Singh resident of

village Sherpur, Tehsil Batala, District Gurdaspur presently settled at England, who had lodging a complaint against the petitioner, co-accused Kanwarpal Singh (K.P.), Deed Writer, Qadian, District Gurdaspur and Satish Kumar, Naib Tehsildar, Qadian, District Gurdaspur on Anti-Corruption Portal of the Vigilance Bureau, Punjab on 15.12.2023 (Registered as Online Complaint No. 152627 dated 15.12.2023) alleging therein Satish Kumar, Naib Tehsildar, Qadian, District Gurdaspur had taken an illegal gratification of Rs. 2,20,000/- through his tout co-accused Kanwar Pal Singh and deed writer Sunny for the sanction of mutation.

4. That the aforesaid complaint was marked to the office of the deponent for the purpose of the verification of the aforesaid allegations by the office of the Chief Director, Vigilance Bureau, Punjab through the office of the Senior Superintendent of Police, Vigilance Bureau, Range Amritsar. During the verification of the alleged facts, the deponent summoned the petitioner and other suspects i.e., Kanwar Pal Singh Deed Writer, Satish Kumar, Naib Tehsildar, Qadian, District Gurdaspur and Karamjit Singh, Patwari of Revenue Circle Talwandi Jhungle village Sherpur, Batala, District Gurdaspur and record their respect statements in compliance with the provisions of the natural justice. The statement as well as the documents from the Complainant Kulwant Singh were also obtained from him through e-mail and statement of his brother-in-law Gurjit Singh was also recorded.

5. That during the course of enquiry, the Complainant also presented audio recordings of telephonic conversation between him and the petitioner and co-accused Kanwarpal Singh, Deed Writer and the receipts relating to the deposit of 1995 British Pound i.e., 1500 on 16.10.2023 and 495 on 18.10.2023, (Rs. 2,00,000/- approximately) in the bank account of co-accused Kanwarpal Singh were also provided by him.

6. That on the conclusion of the enquiry, it has been found that the father of Complainant Kulwant Singh namely Gurdial Singh had transferred agricultural land measuring 27 kanals 14 marlas situated at village Sherpur, District Gurdaspur in his favour vide Transfer Deed dated 20.09.2023 but the mutation of the aforesaid land on the basis of the Transfer Deed dated 20.09.2023 could not be sanctioned in his favour due to the strike of the Patwaris and he approached the co-accused Kanwarpal Singh, Deed Writer for the sanctioned of mutation, who took Rs. 20,000/- in cash from him through his (Kulwant Singh's) brother-in-law and thereafter, obtained Rs. 2,00,000/- approximately through the deposit of 1995 British Pound (1500 on 16.10.2023 and 495 on 18.10.2023), in his bank account by assuring the Complainant (Kulwant Singh) to manage the sanction of mutation in his favour by paying bribe to Satish Kumar, Naib Tehsildar and Karamjit Singh, Halqa Patwari. The petitioner was working as a typist in the office of the co-accused Kanwar Pal Singh, Deed Writer and he had demanded Rs. 70,000/- from the Complainant Kulwant Singh at his own level for getting the mutation sanctioned in his favour besides the amount of Rs. 2,20,000/- already paid to

co- accused Kanwar Pal Singh by the Complainant. It is pertinent to mention here that co-accused Kanwarpal Singh had alleged in his statement during the enquiry that he had paid Rs. 85,000/- to Patwari Karamjit Singh and Rs. 35,000/- to Naib Tehsildar Satish Kumar for the purpose of sanction of mutation of the transfer deed in favour of the Complainant Kulwant Singh.”

6. Petitioner seeks bail on the ground of custody of around 02 months.

7. State opposes the bail and has referred to paras no.8 and 9 of the reply which reads as under:-

“Role of the petitioner

8. That as per the findings of the enquiry report submitted by the deponent in the office of the Senior Superintendent of Police, Vigilance Bureau, Range Amritsar after the verify the facts alleged by the Complainant (Kulwant Singh) and during the course of investigation conducted so far, it has been found that the petitioner, who used to work as a typist in the office of the prime accused Kanwal Pal Singh, Deed Writer at Tehsil Complex Qadian, District Gurdaspur, had tried to cheat the Complainant Kulwant Singh by demanding Rs. 70,000/- from him at his own level without the knowledge of co-accused Kanwar Pal Singh for getting the mutation sanctioned in his favour by paying bribe to Patwari and Girdaur besides the amount of Rs. 2,20,000/- already paid to co-accused Kanwar Pal Singh by the Complainant for that purpose.

Evidence against the petitioner

9. That the complainant Kulwant Singh has provided the audio recordings of the conversation between him and the co-accused Kanwal Pal Singh and the petitioner in support of his allegations. In the aforesaid audio recordings, the petitioner is found demanding Rs. 70,000/- from the Complainant for getting his work of sanction of mutation in his favour done by managing the Patwari and Girdaur by paying bribe to them. The true translation of the transcript of the audio recording of the conversation between the Complainant and the petitioner, is attached herewith for the kind perusal of this Hon'ble court as Annexure R-1/T.”

8. 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 not taking up the case at the stage of framing of charges or during trial but a regular bail under Section 439 CrPC where petitioner is already in judicial custody, it is not a case for further pre-trial incarceration.

9. As per paragraph 10 of the short reply, the petitioner has been in custody since 22.05.2024. Given the penal provisions invoked regarding pre-trial custody, coupled with the primafacie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for further pre-trial incarceration at this stage.

10. In Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40, Supreme Court holds,

[28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

11. 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.

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

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 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.

(e). While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
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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)	

15. 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.
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. 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. 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. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
- 19. 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

29.07.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.