

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32756-2024
Reserved on: 24.07.2024
Pronounced on: 29.07.2024

Kamal Singh ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ankur Lal, Advocate
for the petitioner.

Mr. Rajat Gautam, Addl. A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
14	15.04.2024	Anti Corruption Bureau, Gurugram, Haryana	384 IPC, 7, 13(1) (B) r/w 13(2) 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 18 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 reply dated 23.07.2024 filed by concerned DySP which reads as follows:-

“3. The brief facts of the present case are that on 15.04.2024, a written complaint was received from Sunil Yadav son of Omkar, resident of village Gokalgarh, Police Station Sadar, Rewari before Anti Corruption Bureau.

4. That in the complaint he alleged therein that he is resident of above-said address and is a retired Naik from Army and had established an office on Bypass, Adarsh Nagar, Rewari. On 08.04.2024 at about 09.30 PM, some police officials visited his office and they took away the mobiles of his co-workers / employee and further asked them to send Sunil (complainant) to Police Station Sadar Rewari. All these facts have been narrated to him by his co-workers/employee. On next day, he had received two phone calls from petitioner ASI Kamal from mobile no. 7988995931 on his mobile no. 7015158585.

5. That thereafter, on 10.04.2024, he met with petitioner ASI Kamal at Police Station Sadar Rewari, who asked the complainant as to he (complainant) has been working as bookie, upon which, complainant replied that earlier he was working as bookie and now he had left the said work, but he further stated that sometimes, he plays online. On this, petitioner ASI Kamal Singh threatened him and stated that complaint is lying against him and he has been working as bookie and they (police officials) are knowing everything.

6. That complainant further alleged that petitioner ASI Kamal had demanded Rs. 20,000/- per month as monthly, and he further alleged that he had to pay Rs. 50,000/- as a bribe for Rs. 20,000/- each for last two months as well as Rs. 10,000/- for releasing a mobile phone otherwise, he will be implicated in a false case, so due to fear, the complainant agreed for the same. Petitioner ASI Kamal asked him to come in two/three days and will introduce the complainant to co accused SHO Sunil Dutt and negotiate about the money.

7. That thereafter, petitioner ASI Kamal handed over the mobile phones of co-workers/employee of complainant and sent him back. On 13.04.2024, complainant had visited Police Station Sadar Rewari, where, petitioner ASI Kamal took him to the room of SHO, where, petitioner ASI Kamal introduced him to co accused SHO Sunil Dutt, who told the complainant that he had to continue working as per existing system, upon which, complainant replied that he was in heavy debt and amount sought was too high to pay by the complainant, upon

which, co accused SHO Sunil Dutt asked him to give Rs. 20,000/- per month and he further alleged that he had to pay Rs. 50,000/- as a bribe for Rs. 20,000/- each for last two months as well as Rs. 10,000/- for releasing a mobile phone further asked him, as to when, he will pay the amount, thereupon, complainant replied that he will arrange the money till Monday.

8. That thereafter, co accused SHO Sunil Dutt along with petitioner ASI Kamal came out of the room and then, petitioner ASI Kamal asked complainant to arrange the money till Monday and thereafter, to make a call to him. All this conversation had been recorded by the complainant in his mobile, which complainant will produce in a pen-drive. He did not want to pay the bribe, so requested to take legal action against them. Accordingly the captioned FIR was registered and investigations were taken up in the matter.

9. That during the course of investigation, trap was laid down after constituting the proper raiding party consequently petitioner ASI Kamal was apprehended with tainted currency notes amounting to Rupees 50,000/- near Police Station Sadar Rewari.”

6. Petitioner seeks bail on the ground that he is a first offender and is in custody for more than 03 months. He is involved in a false case because there is neither any demand nor any acceptance.

7. State opposes the petition and has referred to role of petitioner and evidence against the petitioner which reads as follows:-

“A. The role of the petitioner

1. That petitioner ASI Kamal is named as an accused in the FIR and he was trapped red handed with tainted currency notes amounting Rs. 50,000/- from complainant and the same amount was bribe of the monthly for the purpose of running bookies business illegally.

2. That on 08.04.2024 petitioner ASI Kamal and co accused SHO Sunil Dutt had visited in the office of complainant in the night at about 09:30 PM and took the mobile phone of his co worker/employees with them and asked his co worker/ employee to send the complainant

in the police station.

B. The evidence against the petitioner.

1. That in the complaint, complainant had specifically mentioned the name of petitioner ASI Kamal in the complaint and already stated that they have visited office of the complainant and took the mobile phone of his employees and same got recorded in the CCTV camara.

2. That the petitioner was apprehended red handed while accepting tainted bribe money of Rs. 50,000/- and the same were recovered from him by raiding party in the presence of duty magistrate/ gazetted officer and shadow witness. Further complainant has also produced the recording containing demand of bribe.”

8. An analysis of the above submissions would lead to the outcome that although there is sufficient prima facie evidence connecting the petitioner with the commission of alleged offence, but keeping in view the fact that petitioner is a first offender and is in custody since 15.04.2024, further pre-trial incarceration is not justified.

9. As per paragraph 2 of the bail petition, the petitioner has been in custody since 15.04.2024. 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, subject to the compliance of terms and conditions mentioned in this order.

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	
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.