



109

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-38525-2024

Date of decision: 09.08.2024

Ajay

....Petitioner

Versus

State of U.T. Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Nikhil Kaushik, Advocate
for the petitioner.Mr. Manish Bansal, P.P., U.T. Chandigarh assisted by
ASI Avtar Singh.**HARPREET SINGH BRAR, J. (ORAL)**

The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking issuance of directions to the Special Court/Additional Sessions Judge (Duty) concerned to release the petitioner on his personal bonds as this Court vide order dated 23.11.2023 (Annexure P-5) in CRM-8451-29023 in CRA-S-525-2023 has already suspended the remaining sentence of the petitioner.

Learned counsel for the petitioner *inter alia* contends that after registration of FIR in question, the petitioner was granted regular bail vide order dated 20.07.2021 (Annexure P-2) and he furnished the surety bond by submitting the allotment letter of the house allotted under the economic weaker section category, however, it was declined by the concerned jurisdictional Magistrate on the ground that his mother is not the owner of the house. Thereafter, on 06.06.2022, the petitioner was convicted and awarded five years of sentence and the same was challenged by the petitioner by filing



CRM-M-38525-2024

-2-

CRA-S-525-2023 and on 23.11.2023 (Annexure P-5), the sentence of the petitioner was suspended by this Court.

He further submits that the petitioner is an indigent and poor person and he is not able to furnish bail bonds. He further submits that as on today, out of 05 years of sentence, the petitioner has already undergone 03 years 09 months. His sentence was suspended in November, 2023 and in spite of passing of more than 08 months, he could not arrange his surety.

Learned Public Prosecutor, U.T. Chandigarh, could not controvert the fact that the petitioner was granted the benefit of suspension of sentence on 23.11.2023 and till date, he is not able to furnish bail bonds/surety bonds for his release.

Having heard learned counsel for the parties and after perusal of the record of the case, it transpires that petitioner being a poor and indigent person, is not in a position to furnish bail bonds/surety bonds.

The same controversy was decided by the Hon'ble Division Bench of Chhattisgarh High Court in 'Bhawan Singh and others Vs. State of Chhattisgarh' CRA No.1607 of 2015 vide its order dated 11.05.2022 wherein Hon'ble Division Bench after relying on Hon'ble Apex Court judgment in 'Moti Ram and others Vs. State of M.P.' (1978) 4 SCC 47 and 'Hussainara Khatoon and others (I) Vs. Home Secretary, State of Bihar' (1980) 1 SCC 81, has directed the appellants to release upon executing personal bonds only. The relevant extracts of the Bhawan Singh case (*supra*) are reproduced as under:-

'1. This is extremely unfortunate case where though the appellants herein had been admitted to privilege of bail by order of this Court dated 29.04.2016 and were directed to furnish bail bonds with one solvent surety each for their release, but they could not furnish bail bonds on the ground of their poverty and being member of Scheduled Tribe community and are still in jail for more than six years despite bail have been granted by



suspending their jail sentence...

5. *The question which arose for consideration before us is whether the appellants can be released on bail on their executing only personal bond without insisting them to furnish bail bonds alongwith sureties.*

6. *In order to decide the plea, it would be appropriate to notice Section 389(1) of CrPC by which sentence awarded to an accused person convicted for an offence can be suspended in pending appeal and he can be released on bail, which states as under:*

389. Suspension of sentence pending the appeal; release of appellant on bail. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond."

7. *A careful perusal of the provisions contained in Section 389(1) of CrPC would show that the Legislature has consciously empowered the Appellate Court to suspend the substantive jail sentence of a convicted person, for the reasons to be recorded in the order, pending final disposal of the criminal appeal filed by him, and if he is in confinement, he be released on bail or on his own bond as, such, it is absolutely discretionary in nature and it is for the Appellate Court to decide as to whether an accused can be released on bail or on his own bond by suspending his substantive jail sentence.*

8. *The Supreme Court in the case of Moti Ram (supra) considered the issue whether the Appellate Court is empowered to enlarge convicted accused on his own bond without sureties and in Para-3 of the judgment their Lordships framed three questions, out of which we are concerned here only with Questions No.(1), which states as under:*

"3.(1) Can the Court, under the Code of Criminal Procedure, enlarge, on his own bond without sureties, a person undergoing incarceration for a non-bailable offence either as undertrial or as convict who has appealed or sought special leave?...."

27. The slippery aspect is dispelled when we understand the import of Sec. 389(1) which reads: 389 (1): Pending any appeal by a convicted person the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

The court of appeal may release a convict on his own bond without sureties. Surely, it cannot be that an under-trial is worse off than a convict or that the power of the court to release increases when the guilt is established. It is not the court's status but the applicant's guilt status that is germane. That a guilty man may claim judicial liberation pro tempore without sureties while an undertrial cannot is a reductio ad absurdum.



31. Even so, poor men- Indians are, in monetary terms, indigents- young persons infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances- put whatever reasonable conditions you may."

10. Thus, in view of the provision contained in Section 389(1) of CrPC and in view of principles of law laid down by their Lordships of the Supreme Court in Moti Ram (supra) and Hussainara Khatoon (supra), the Appellate Court in appropriate case is fully empowered to release the convict on personal CRA-1607-2015 bond taking into account the nature and circumstance of offence charged, evidence available against the convict, his family background and financial condition etc, to ensure his appearance in Court as and when required.

11. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the matters of Moti Ram (supra) and Hussainara Khatoon (supra), it is quite vivid that the appellants being poor persons belonging to Scheduled Tribe community are in jail since 11.08.2013 and are not in contact with their family members and, therefore, they are unable to furnish bail bonds as directed by this Court vide order dated 29.04.2016 while granting bail to them. Accordingly, we deem it appropriate to direct that the appellants, namely, Bhawan Singh, Jai Singh and Sukhsen Gond be released on bail forthwith on their executing only personal bond of Rs.5,000/- (Rupees Five Thousand Only) and shall appear before the Registry of this Court on 16th August, 2022. They shall thereafter appear before the concerned trial Court on a date to be given by the Registry of this Court and shall continue to appear there on all such subsequent dates as are given to them by the said Court, interval being not less than 6 months, till the disposal of this appeal. It is ordered accordingly.'

The Hon'ble Apex Court vide its order dated 31.01.2023 in Re Policy Strategy for Grant of Bail (Suo Moto Writ Petition) (Criminal) No.4/2021 issued seven directions to avoid delay in release of prisoners after getting bail which have been reproduced as:

'...1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department.

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.



CRM-M-38525-2024

-5-

3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation.

7) One of the reasons which delays the release of the accused/convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety.”

11. We order that the aforesaid directions shall be complied with.’

In view of the provisions contained under Section 389 (1) Cr.P.C. and the judgment of Hon’ble Division Bench of Chhattisgarh High Court in **Bhawan Singh’s case (supra)** and judgment of the Hon’ble Supreme Court in **Moti Ram’s case (supra)** the present petition is allowed and the Duty Magistrate/Illaq Magistrate is directed to release the petitioner on his personal bonds to its satisfaction.

(HARPREET SINGH BRAR)
JUDGE

09.08.2024

Neha

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