



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 10th of May, 2024

(202)		
	CRM-M-49429-2023	
Sharanjit Singh @ Suraj		Petitioner
	Versus	
State of Punjab		Respondent
	CRM-M-53020-2023 (O&M)	
Virender		Petitioner
	Versus	
State of Haryana		Respondent
	CRM-M-12759-2024	
Naresh Kumar		Petitioner
	Versus	
State of Haryana		Respondent
	CRM-M-10199-2024	
Pawan alias Kaidi		Petitioner
	Versus	
State of Haryana		Respondent
(203)		
	CRM-M-19134-2024	
Ajay Pandit alias Ajay Kumar Pandit		Petitioner
	Versus	
State of Haryana		Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ramesh Sharma, Advocate
for the petitioner (CRM-M-49429-2023).



Mr. B.R.Rana, Advocate
for the petitioner (CRM-M-53020-2023).

Mr. Randeep Singh, Advocate
for the petitioner (CRM-M-12759-2024).

Mr. H.P.S.Ishar, Advocate
for the petitioner (CRM-M-10199-2024).

Mr. Sanyam Ketarpal, Advocate
for the petitioner (CRM-M-19134-2024).

Mr. Ravinder Singh, AAG, Punjab.

Mr. Gaurav Bansal, DAG, Haryana.

Mr. Aditya Sanghi, Advocate Amicus Curiae.

Mr. Dheeraj Jain, Sr. Counsel with
Mr. Sahil Garg, Advocate for NIC & UIDAI.

PANKAJ JAIN, J. (Oral)

The present bunch relates to FIRs wherein the allegations against the petitioners are of having conned the Courts. The petitioners are the persons who faked their identity while furnishing surety bonds pursuant to the bail orders passed by the Courts. The menace is widespread. These five bail applications before this Bench is testimony to the said fact. Repeatedly the Constitutional Courts have underlined necessity of separate law relating to bails. The chorus has only grown louder in recent times.

2. Chapter XXXIII of the Code of Criminal Procedure, 1973 deals with provisions related to bail and bonds. Section 441 of the 1973 Code deals with bond of accused and sureties. Section 441A deals with declaration by sureties. Section 443 empowers the Courts to order sufficient bail when



that first taken is insufficient. The provisions read as under :

441. Bond of accused and sureties.—(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

441A. Declaration by sureties.—Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

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443. Power to order sufficient bail when that first taken is insufficient.—If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.”



3. The aforesaid provisions are supplemented by High Court Rules and Orders. Chapter 10 (Volume III) of High Court Rules and Orders deals with the subject. Rule 9A needs to be perused :

“9A. To avoid abscondence of accused due to furnishing of bogus surety or surety bond by a stock surety, the surety, in all cases under the NDPS Act, the cases in which offence is serious and sentence provided is of more than 10 years imprisonment or the cases under the special enactment like POTA etc. shall furnish two copies of his latest passport size photograph, which is not older than six months before the date of submission, of which one copy shall be retained in the Court record and one copy to be retained by the concerned police station, alongwith one of the following documents:-

1. Passport.
2. Identity Card issued by the Election Commission of India.
3. Permanent Account Number Card, i.e. PAN Card issued by the Income-Tax Department.
4. ATM/ Debit Card or Credit Card issued by any Nationalised or Private Bank of Standing at the National Level, having photograph of the holder thereon.
5. Identity Card issued by the Government Authorities or the Public Statutory Corporations.
6. Any such document, which is ordinarily issued by an Authority after due verification of the Identity of the person and his address, which the Judge or the Magistrate may think just and proper, in the interest of justice, by recording specific reasons.
7. If surety is not in possession or unable to produce any document referred to in Clause 1 to 5 above or documents demanded by Judge/ Magistrate under Clause 6, his identity and address be got verified from Police Station within whose jurisdiction such surety resides or works.”



4. Pollutants in form of professional sureties in the system were first noticed by Legal Aid Committee appointed by Govt. of Gujarat. Report of the Committee was quoted by Supreme Court in the case of **Moti Ram and others vs. State of M.P., (1978) 4 SCC 47** observing as under :

“16. The vice of the system is brought out in the Report:

"The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention. Both these consequences are fraught with great hardship to the poor. In one case the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his release; in the other he is deprived of his liberty without trial and conviction and this leads to grave consequences, namely: (1) though presumed innocent he is subjected to the psychological and physical deprivations of jail life; (2) he loses his job, if he has one, and is deprived of an opportunity to work to support himself and his family with the result that burden of his detention falls heavily on the innocent members of the family, (3) he is prevented from contributing to the preparation of his defence; and (4) the public exchequer has to bear the cost of maintaining him in the jail."(3)

(3) Report of the Legal Aid Committee appointed by the Government of Gujarat, 1971 and headed by the then Chief Justice of the State, Mr. Justice P. N. Bhagwati, p. 185.”

5. The professional sureties have become the norm as the genuine sureties are wary to encumber their property due to prolonged trials. Delay in trials is leading to a situation where genuine surety is being pushed out by



professional surety. Just like it is famously said, “bad money keeps good money out of circulation”. The other reason for mushrooming of professional sureties is the practice being adopted by the criminal courts of insisting upon the sureties and not releasing accused on personal bonds. Apex Court in the case of **Hussainara Khatoon and others vs. Home Secretary, State of Bihar, Patna, (1980) 1 SCC 81** highlighting the malady and formulated following remedial measures :

“3. xxx The Legal Aid Committee appointed by the Government of Gujarat under the Chairmanship of one of us, Mr. Justice Bhagwati, emphasised this glaring inequality in the following words :

"The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail as fixed



by the Magistrate is not high, for a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount."

The Gujarat Committee also pointed out how the practice of fixing the amount of bail with reference to the nature of the charge without taking into account relevant factors, such as the individual financial circumstances of the accused and the probability of his fleeing before trial, is harsh and oppressive and discriminates against the poor.

"The discriminatory nature of the bail system becomes all the more acute by reason of the mechanical way in which it is customarily operated. It is no doubt true that theoretically the Magistrate has broad discretion in fixing the amount of bail but in practice it seems that the amount of bail depends almost always on the seriousness of the offence. It is fixed according to a schedule related to the nature of the charge. Little weight is given either to the probability that the accused will attempt to flee before his trial or to his individual financial circumstances, the very factors which seem most relevant if the purpose of bail is to assure the appearance of the accused at the trial. The result of ignoring these factors and fixing the amount of bail mechanically having regard only to the seriousness of the offence is to discriminate against the poor who are not in the same position as the rich as regards capacity to furnish bail. The Courts by ignoring the differential capacity of the rich and the poor to furnish bail and treating them equally produce inequality between the rich and the poor; the rich who is charged with the same offence in the same circumstances is able to secure his release while the poor is unable to do so on account of his poverty. These are some of the major defects in the bail system as it is operated today."

The same anguish was expressed by President Lyndon B. Johnson at the time of signing the Bail Reforms Act, 1966 :



"Today, we join to recognise a major development in our system of criminal justice: the reform of the bail system.

This system has endured - archaic, unjust and virtually unexamined - since the Judiciary Act of 1789.

The principal purpose of bail is to ensure that an accused person will return for trial if he is released after arrest.

How is that purpose met under the present system? The defendant with means can afford to pay bail. He can afford to buy his freedom. But poorer defendant cannot pay the price. He languishes in jail weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.

He does not stay in jail because he is any more likely to flee before trial.

He stays in jail for one reason only - because he is poor...."

The bail system, as it operates today, is a source of great hardship to the poor and if we really want to eliminate the evil effects of poverty and assure a fair and just treatment to poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pretrial release without jeopardising the interest of justice.

4. It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job



security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation. Of course it may be necessary in such a case to provide by an amendment of the penal law that if the accused wilfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pretrial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our Courts in regard to pretrial release. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond it can safely release the accused on his personal bond. To determine whether the accused has his roots in the community which would deter him from fleeing, the Court should take into account the following factors concerning the accused :

1. the length of his residence in the community,
2. his employment status, history and his financial condition,
3. his family ties and relationships,
4. his reputation, character and monetary condition,
5. his prior criminal record including any record or prior release on recognizance or on bail,
6. the identity of responsible members of the community who would vouch for his reliability.
7. the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance, and
8. any other factors indicating the ties of the accused to the



community or bearing on the risk of wilful failure to appear.

If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused his previous record and the nature and circumstances of the offence, there may be a substantial risk of his non-appearance at the trial, as for example, where the accused is a notorious bad character or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the court may not release the accused on his personal bond and may insist on bail with sureties. But in the majority of cases, considerations like family ties and relationship, roots in the community, employment status etc. may prevail with the court in releasing the accused on his personal bond had particularly in cases where the offence is not grave and the accused is poor or belongs to a weaker section of the community, release on personal bond could, as far as possible, be preferred. xx”

(emphasis supplied)

6. However, the Courts at large still insist upon sureties.
7. In the considered opinion of this Court inquiry by the Magistrate as provided under Section 441(4) holds the key and it needs to be prompt. After all once a person has been granted bail, the same being question of his liberty, time is of the essence.
8. The Parliament enacted Aadhaar (Targeted Delivery of Financial Other Subsidies Benefits and Services) Act, 2016 with an aim to provide good governance, efficient, transparent and targeted delivery of



subsidies, benefits and services, the expenditure for which is incurred from the Consolidated Fund of India to individuals residing in India through assigning of unique identity numbers to such individuals and for matters connected therewith or incidental thereto. Relevant provisions of the 2016 Act read as under :

“2. (a) “Aadhaar number” means an identification number issued to an individual under sub-section (3) of section 3, and includes any alternative virtual identity generated under sub-section (4) of that section;]”

Chapter II deals with enrollment. Section 3 deals with Aadhaar number and the same reads as under :

“3. **Aadhaar number.**—(1) Every resident shall be entitled to obtain an Aadhaar number by submitting his demographic information and biometric information by undergoing the process of enrolment:

Provided that the Central Government may, from time to time, notify such other category of individuals who may be entitled to obtain an Aadhaar number.

(2) The enrolling agency shall, at the time of enrolment, inform the individual undergoing enrolment of the following details in such manner as may be specified by regulations, namely:—

- (a) the manner in which the information shall be used;
- (b) the nature of recipients with whom the information is intended to be shared during authentication; and
- (c) the existence of a right to access information, the procedure for making requests for such access, and details of the person or department in-charge to whom such requests can be made.

(3) On receipt of the demographic information and



biometric information under sub-section (1), the Authority shall, after verifying the information, in such manner as may be specified by regulations, issue an Aadhaar number to such individual.

1[(4) The Aadhaar number issued to an individual under sub-section (3) shall be a twelve-digit identification number and any alternative virtual identity as an alternative to the actual Aadhaar number of an individual that shall be generated by the Authority in such manner as may be specified by regulations.]”

9. In maximum cases in the present bunch the accused persons are facing allegation of having faked their Aadhaar Cards. In order to make inquiry more prompt as contemplated under Section 441(4), verification of Aadhaar Cards/Aadhaar numbers needs to be seamless.

10. Taking cognizance of the menace of impersonation of sureties Supreme Court on 11th of June, 2021 in **Petition(s) for Special Leave to Appeal (Crl.) No(s).4116/2021** titled as **Rajesh Kumar Rathore vs. The State of Chhatisgarh** issued notice to UIDAI to explore the feasibility of evolving mechanism to verify genuineness of the surety observing that :

“Learned counsel for the petitioner states that the charge-sheet has been filed on 23.12.2020 but the charges have not been framed.

We do not find any reason to entertain the present Special Leave Petition but we give liberty to the petitioner to renew his request for bail after the framing of charges. The learned trial Court shall decide the application on merits in accordance with The Special Leave Petition stands disposed of. Pending applications disposed of.

The problem of impersonation of sureties is rampant in at least some States. We understand that there is a surety module software prepared by National Informatics Center in



the Case Information Module for the Sub-ordinate Courts in India. But there is still no mechanism with the courts to verify the genuineness of the surety. Therefore, we deem it appropriate to issue notice to the Central Government and to the Unique Identification Authority of India (UIDAI) Bangla Sahib Road, behind Kali Mandir, Gole Market, New Delhi 110001 as to find out possibility of mechanism for verification of the surety by the judicial officers for its authentication as part of good governance. The desirability of issuing notice to the States and Union Territories shall be decided on the basis of response from the Union/ UIDAI.

The matter regarding verification of the surety be placed before the Hon'ble Chief Justice for constitution of an appropriate Bench as deemed appropriate.”

11. Navigated by the observations of the Apex Court this Court requested Ld. Additional Solicitor General to get instructions from UIDAI as well as NIC w.r.t. provisioning of online access at Courts so that the Aadhaar Cards provided by the sureties can be verified seamlessly and promptly.

12. Counsel for the Union of India appearing for UIDAI has filed short reply by way of an affidavit of Smt. Taruna Kataria, Deputy Director, UIDAI, Regional Office, Chandigarh. The same reads as under :

“12. Accordingly, applicable statutory provisions and laid down procedure therefor require that the Ministry or the Department of the Government of India or the State Government apply for use of Aadhaar authentication.

13. That, accordingly, for the use of Aadhaar authentication, a three-pronged requirement has to be met:

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- (1) An application has to be made to Meity, seeking authentication;
- (ii) Such application is to be forwarded by Meity to UIDAI, for UIDAI to satisfy itself that the proposal is in accordance with relevant statutory provisions; and
- (iii) Only upon satisfaction regarding fulfilment of statutory provisions as specified hereinabove, the use of Aadhaar authentication may be allowed.

14. That, an identical issue of submission of fake sureties in Court for release of accused on bail came up before the Hon'ble Karnataka High Court. Vide the order dated 23-09-2022, passed in **WP No. 8524 of 2019 titled as 'Narayana B. & anr. vs State of Karnataka & anr.'**, the Hon'ble Karnataka High Court issued certain directions regarding furnishing of sureties for release of an accused on bail.

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15. That, thereafter, UIDAI filed a petition before the Hon'ble Karnataka High Court against the said directions, which was registered as **WP No. 6723 of 2023 'UIDAI vs Narayana B. & ors'**. The said petition was disposed of by the Hon'ble Karnataka High Court vide its order dated 3-10-2023, clarifying para 7.10 of the order dated 23.09.2022 as follows:

"10. In view of the submissions made by learned DSGI and learned AGA what is required to be done by this Court is only a clarification of para 7.10 of the order dated 23.09.2022 and as such the same is clarified as under:

10.1 The Principal Secretary, e-Governance Department shall make an application under Rule 4 of The Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 to the Secretary



Ministry of Electronic and IT in the prescribed form requesting for Aadhaar authentication services in any Court proceedings...

10.2. The said application once received by the Secretary, Ministry of Electronics and IT, it would consider the same favourably..."

[Emphasis added]

A copy of the order dated 3-10-2023 passed by the Hon'ble Karnataka High Court is annexed herewith as **Annexure A-4.**

16. That, in the instant matter, UIDAI is not in receipt of any application/proposal for use of Aadhaar authentication.

17. That in case an application is made by the appropriate Department of the State Government concerned, through MeitY, for Aadhaar authentication of sureties for release of an accused on bail in Punjab, Haryana and Chandigarh, all necessary steps shall be taken expeditiously by UIDAI as per law."

13. Status report on behalf of the National Informatics Centre (NIC) by way of affidavit of Shri Surinder Kumar working as Scientist D, NIC Cell, Punjab and Haryana High Court, Chandigarh has also been filed. It mentions that a periphery module related to surety, developed by Punjab & Haryana High Court, is in place and is currently running in all Courts of Punjab, Haryana and U.T., Chandigarh. The same needs to be and can be integrated for use of Aadhaar Authentication after being taken up by appropriate authority in the High Court/States with MeitY/UIDAI. NIC has



expressed readiness to provide all technical assistance.

14. The usage of Aadhaar Card for investigation of crime and protection of revenue was held to be among the legitimate aims of the State by Five Judges Bench in **K.S. Puttaswamy vs. Union of India, (2019) 1 SCC 1**. Aadhaar Card shall fall in Clause 6 of Rule 9A of the High Court Rules and Orders as referred in Para 3 hereinabove.

15. In view thereof, this Court considers to issue the following directions:

- (i) The appropriate Authorities i.e. the Secretaries of e-Governance Department of State of Punjab, State of Haryana as well as Union Territory, Chandigarh shall make appropriate application under Rule 4 of the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 to the Secretary Ministry of Electronics and IT in the prescribed form requesting for Aadhaar Authentication Services in all the Court premises situated in their respective States/U.T. **within 30 days** from the date of receipt of certified copy of this order.
- (ii) The said application once received by the Secretary, Ministry of Electronics and IT, shall be considered favourably within a further period of 30 days. The necessary equipment to be provided to the Courts in



terms of the applicable scheme with applicable contribution by the State and the Central Government will be provided within a further **period of 30 days**. Entire system shall be made operational including implementation of software and hardware within a **period of 4 months** from the date of receipt of certified copy of this order.

- (iii) That the infrastructure for bio-metric verification of the Aadhaar Card at the Court premises shall be provided by the NIC, with the technical assistance of UIDAI.

ONCE THE INFRASTRUCTURE IS IN PLACE:

- (iv) The Courts while accepting surety shall insist for complete details and identity document of surety including Aadhaar Card. Consent of the surety shall be obtained for verification of Aadhaar Card.
- (v) The Magistrate concerned i.e. the Magistrate having jurisdiction over the local areas within the limits of the concerned station shall verify the Aadhaar Card of the accused in the case of personal bond and the Aadhaar Cards of the sureties as well in the case of surety bonds.
- (vi) For first time accused facing prosecution *qua* offences punishable with imprisonment of less than 7 years under



the Indian Penal Code, the Courts shall comply with guidelines issued by Supreme Court in **Hussainara Khotoon**'s case *ibid* and shall not insist on sureties if parameters laid down in Para 4 of the said judgment are fulfilled on inquiry/verification of Aadhaar number of the accused.

- (vii) The Periphery Surety Module which was planned with the provision of not only integration of Aadhaar which authenticates and identifies individual Aadhaar number holder but also immoveable property details which are tendered as surety by the party in the case, shall be fully implemented and utilized optimally. Whenever a person is to stand as surety the same shall be cross-checked with the database to satisfy w.r.t. the provisions of Section 441A of 1973 Code.
- (viii) The Principal District Judge and the Chief Judicial Magistrates shall inspect the register of Sureties periodically, preferably after every three months.
- (ix) Registrar General, Punjab & Haryana High Court is directed to issue necessary circulars to all the Courts in the States of Punjab, Haryana and U.T., Chandigarh. Necessary Rules be also framed in this respect, in the meantime, if so required.



16. Copy of this order be circulated to all the Subordinate Courts in the States of Punjab, Haryana and U.T., Chandigarh for necessary compliance.
17. Copy of this order be also served upon the Secretaries Ministry of Electronics and IT of Union of India, State of Punjab, Haryana and U.T., Chandigarh for necessary compliance within the time limits stipulated hereinabove.
18. The present petitions are disposed off accordingly. The interim bail granted to the petitioners earlier by this Court, is made absolute.
19. A copy of this order be kept on the files of other connected cases.

May 10, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes