IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-59682-2022 (O&M)
Reserved on: 09.01.2024
Pronounced on: 19.01.2024

Naveen Kumar Garg

... Petitioner(s)

Versus

State of Punjab & another

…Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. R.S. Rai, Sr. Advocate with
Mr. Anurag Arora, Advocate
for the petitioner(s).

Mr. Shiva Khurmi, AAG, Punjab.

Mr. Avinit Avasthi, Advocate
for respondent no.2.

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ANOOP CHITKARA, J.

FIR No.	**Dated**	**Police Station**	**Sections**
25	22.11.2022	Vigilance Bureau, FS-1, Punjab at Mohali, District SAS Nagar	409, 420, 465, 468, 471 IPC and Sections 13(1)(A) read with Section 13(2) of the Prevention of Corruption Act, 1988.

1. Apprehending arrest in the FIR captioned above, the petitioner had come up before this Court under Section 438 CrPC seeking anticipatory bail, which was listed for the first time on 20.12.2022.

2. Vide order dated 20.12.2022, the coordinate Bench of this Court had stayed the petitioner's arrest which continued till 13.09.2023 when this Court extended the same subject to petitioner's declaring all his assets and keeping one pre-paid SIM card, as mentioned in the said order. The interim order continued till 6.11.2023, when this Court had reserved the judgment. However, while dictating the judgment, since this Court wanted certain clarifications the matter was posted for rehearing. However, the interim order continued. Now, reply dated 8.1.2024 has been filed by the concerned DySP and the matter has been reheard.

3. Petitioner's counsel prays for bail by imposing any stringent conditions including declaration of assets by the petitioner and family members, and are 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 custodial interrogation and pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

4. The State's counsel opposes the bail and states that considering the allegations, the petitioner's custodial interrogation is necessary.

5. I have heard counsel for the petitioner as well as the State and gone through the record.

6. It will be appropriate to refer to paragraph nos.3 and 4 of the reply dated 8.1.2024 filed by the State by way of affidavit of concerned DySP, which read as under:-

> "3. That the answering deponent has earlier filed a detailed status report by way of affidavit dated 11.12.2023 of Deputy Superintended of Police, Vigilance Bureau, EOW-I, Punjab which is part of record and for the sake of brevity, the same is not been reproduced herewith but the contents of the same may also be read as a part and parcel of the present short affidavit. The offences involved in the present FIR is still under investigation and after the interim bail granted by this Hon'ble court vide order dated 20.12.2022, the present petitioner Mr. Naveen Kumar Garg has been joined in the investigation process and the formal procedure of joining the investigation was conducted and interim bail bonds were furnished by the present petitioner and the petitioner joined the investigation on dated 26.12.2022 and then he was further asked to join the investigation on various dates i.e. 05.01.2023, 26.12.2023, 01.01.2024 and 04.01.2024.
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> 4. That vide order dated 11.12.2023 this Hon'ble Court has passed a specific order directing the State to verify the assets declared by the petitioner vide his affidavit dated 19.09.2023, the orders reads as follows:
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> > Vide order dated 13.09.2023, this Court had extended the interim protection subject to petitioner's no objection in declaring assets by the petitioner and their spouse. On 06.11.2023, when this Court had heard the arguments, counsel for the petitioner submitted that the petitioner had voluntarily complied with the terms and conditions of order dated 13.09.2023 and they would neither take it as a plea for self-incrimination nor as violation of Article 20/21 of Constitution of India.
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> > "Counsel for the petitioner submits that he is being framed up, he is innocent and he did not collect any wealth beyond the known sources. Counsel for the petitioner further submits that the complainant is not a whistle blower, rather his entire agenda is to cause damage to the petitioner.

> State counsel seeks some time to verify assets declared by the petitioner.
> List on 09.01.2024.
> State to verify the assets declared by the petitioner positively in the meantime.
> Interim order to continue till the next date of hearing.
> Let the concerned DySP to file reply along with verification. In case of failure, this Court shall direct the Senior Superintendent of Police to do so."

> To answer the specific direction, it is very humbly submitted that the investigating officer has personally verified each and every detail of Affidavit submitted by the petitioner on 19.09.2023 and has cross checked the same with the market values and from the reliable government resources i.e. Financial Institution and banks to ascertain the varsity and truthfulness of the declaration of assets by the petitioner vide affidavit dated 19.09.2023 and the answering deponent is satisfied to the extent that all the information provided in the affidavit dated 19.09.2023 by the petitioner are found to be correct and rightly valued. However, there are some minor changes in the values of amounts deposited with the financial institution through various instruments due to passage of time as the valuation by the investigating officer has made the valuation in the month of December 2023. Apart from this there is no other change in the affidavit and the value of assets and financial instruments mentioned in the affidavit of the petitioner."

7. As per paragraph 3 of the reply, the matter is still under investigation and further the concerned DySP had verified all the assets disclosed by the petitioner. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had intimidated witnesses or that he had hampered the investigation, or despite being called to join the investigation, he did not appear before the investigator. Given the above, there would be no justification to discontinue the interim protection, which was granted way back in 2022.

8. Given the penal provisions invoked, coupled with the *prima facie* analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability for pre-trial incarceration.

9. 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 ally the apprehension expressed by CBI.

10. 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.

11. 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.

12. 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.

13. 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 investigator /SHO concerned, and in case of non-availability, to any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer 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 petitioners shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds, thinks appropriate or considers the accused as a flight risk.	

3.	Mobile number (If available)	
4.	E-Mail id (If available)	

14. The petitioner is directed to join the investigation as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM, let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. The petitioner shall not influence, browbeat, pressurize, 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.

17. <u>The petitioner is directed not to keep more than one prepaid SIM, i.e., one pre-paid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers</u>. <u>The petitioner must comply with this condition within fifteen days of release from prison.</u> The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main

number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, **2023 INSC 655**, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."

18. 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.

19. The conditions mentioned above imposed by this Court are to endeavour that the accused tries to reform, does not repeat the offence and to provide a sense of security to the victim. 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."

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 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. 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.

23. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

24. *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

January 19, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes