



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

258/3

CRM-M-60241-2022 (O&M)
Date of Decision:- 13.12.2024

SANJAY GUPTA

....Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present : Mr. Sangram Singh Saron, Advocate for the petitioner.

Mr. Amit Shukla, AAG Punjab.

Mr. Shaurya Khanna, Advocate for respondent No.2.

SANJIV BERRY, J. (ORAL)

1. The present petition has been filed under Section 482/483 Cr.P.C. seeking quashing of the impugned order dated 12.11.2021 (Annexure P-4) and for modification of the impugned order dated 04.03.2020 (Annexure P-2) passed by learned Judicial Magistrate First Class, SAS Nagar, Mohali in case FIR No.196 dated 12.09.2019 registered under Sections 420, 406 and 120-B IPC at Police Station Phase-I, SAS Nagar, Mohali.
2. Upon notice of motion, the petition was contested by the State and also by learned counsel for complainant/respondent No.2.
3. Arguments have been heard and record has been perused.
4. It is *inter alia* contended by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in this case. He



submits that consequent upon the arrest of the petitioner, he was granted the concession of bail vide order dated 04.03.2020 (Annexure P-2), wherein the learned trial Court had imposed unreasonable conditions, some of which being violative of Article 21 of the Constitution of India. Accordingly, the petitioner had moved an application for modification of some of the conditions, which was dismissed by the Court vide impugned order dated 12.11.2021 (Annexure P-4), without applying its judicial mind, hence, the present petition.

5. Learned counsel for the petitioner contends that although the petitioner had sought modification of the conditions No.1, 2 and 4 imposed in the order dated 04.03.2020, while moving an application (Annexure P-3), however, under the instructions of his client, he submits that he does not press for modification of condition No.1 at this stage. Similarly, as regards modification of condition No.2, he does not press for the same at this stage with liberty to move an appropriate application before the learned trial Court in accordance with law in case of any exigency in future. He contends that his main grievance is only qua condition No.4, whereby, the learned Magistrate had imposed an unreasonable condition upon the petitioner that he will not leave the territory of Punjab without intimating the concerned SHO of Police Station Phase-I, SAS Nagar, Mohali, which according to him, is violative of his fundamental right of personal liberty guaranteed under Article 21 of the Constitution of India. He submits that the petitioner is a permanent resident of Gurugam and he cannot be confined within the territorial jurisdiction of Punjab, as the same is creating hindrance to the petitioner by causing



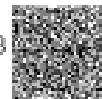
unreasonable restraint on his personal and professional life. In this regard, learned counsel has referred to the decisions of the Hon'ble Supreme Court in *Dataram Singh Versus State of Uttar Pradesh*, (2018) 3 SCC 22; *Akbal Ansari Vs. State (N.C.T. of Delhi)* Criminal Appeal No.4286 of 2024 decided on 21.10.2024; *Manish Sisodia Vs. Directorate of Enforcement* passed in Miscellaneous Application No.2344 of 2024 in Criminal Appeal No.3295 of 2024 decided on 11.12.2024; and also *Girish Gandhi Vs. The State of Uttar Pradesh and others* passed in Writ Petition (Criminal) No.149 of 2024 decided on 22.08.2024 and prayed for deletion of condition No.4.

6. Learned State counsel assisted by learned counsel for the complainant, has opposed the petition on the ground that the conditions imposed by learned trial Court, while granting bail to the petitioner, have been rightly imposed by taking into consideration the nature and gravity of offence, and also the fact that the petitioner is involved in a scam involving Crores of Rupees, and as such, no ground is made out for modification of the aforesaid conditions.

7. After considering the rival contentions and perusing the record, it is observed that consequent upon the arrest of the petitioner, he was granted the concession of regular bail vide order dated 04.03.2020 (Annexure P-2), whereby the learned Magistrate, while granting the concession of bail, had imposed the following conditions.

“1. Furnishing of bail bonds in the sum of Rs.10 lakh with one surety in the like amount and the surety should be in the blood relation of the accused.

2. That the accused shall surrender his passport before the court and also furnish an affidavit to the effect that he



did not have any other passport, except the passport so surrendered before the court.

3. That the accused will not leave the country without the prior permission of the court.

4. That accused will further not leave the territory of Punjab without intimating to the SHO concerned of police station, Phase-I, SAS Nagar, Mohali.

5. That the accused should also furnish his local address.

6. That accused will appear before the court on each and every date of hearing.

7. That accused will not tamper with the evidence or shall not directly or indirectly make any inducement, threat or promised to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

8. That accused shall not commit an offence similar to the offence of which he is accused or suspected of the commission of which he is suspected.”

8. Consequently, the petitioner moved an application, seeking modification of the aforesaid conditions No.1, 2 and 4, which was declined by learned trial Court vide impugned order dated 12.11.2021 (Annexure P-4).

9. As already stated above, during the course of arguments, learned counsel for the petitioner has not pressed for modification of conditions No.1 and 2 with the liberty that in case of exigency, the petitioner will move an appropriate application in accordance with law before the learned trial Court.

10. This leaves for consideration of this Court as to whether the imposition of condition No.4 in the impugned order dated 04.03.2020 (Annexure P-2) is justifiable and in accordance with the law.

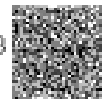
11. For the sake of convenience, condition No.4 is reproduced as under.



“4. That accused will further not leave the territory of Punjab without intimating to the SHO concerned of police station, Phase-I, SAS Nagar, Mohali.”.

12. Admittedly, the petitioner is a permanent resident of District Gurugram and carrying his business in the State of Haryana. By virtue of the aforesaid condition, the petitioner is forced to remain within the territorial jurisdiction of State of Punjab and the petitioner being a citizen of India has a fundamental right to life and personal liberty as enshrined under Article 21 of the Constitution of India. It will be apt to mention here that the Hon’ble Supreme Court in the case of **Akbal Ansari** (*supra*) had set aside the condition laid while enlarging the petitioner therein on bail that he will arrange an accommodation in Delhi and should reside in Delhi till the conclusion of trial. Further, in the case of **Manish Sisodia** (*supra*), the Hon’ble Supreme Court deleted the condition laid in the bail order requiring the petitioner therein to report to the Investigating Officer on every Monday and Thursday between 10:00 A.M to 11:00 A.M. Still further, the Hon’ble Supreme Court in its judgment dated 22.08.2024 passed in the case of **Girish Gandhi** (*supra*) has observed as under:-

“23. From time immemorial, the principle has been that the excessive bail is no bail. To grant bail and thereafter to impose excessive and onerous conditions, is to take away with the left hand, what is given with the right. As to what is excessive will depend on the facts and circumstances of each case. In the present case, the petitioner is experiencing a genuine difficulty in finding multiple sureties. Sureties are essential to ensure the presence of the accused, released on bail. At the same time, where the court is faced with the situation where the accused enlarged on bail is unable to find sureties, as ordered, in multiple cases, there is also a need to balance the requirement of furnishing the sureties with his or her funda-



mental rights under Article 21 of the Constitution of India. An order which would protect the person's fundamental right under Article 21 and at the same time guarantee the presence, would be reasonable and proportionate. As to what such an order should be, will again depend on the facts and circumstances of each case."

13. In the backdrop of the aforesaid judicial decisions of the Hon'ble Apex Court, it will be worth mentioning here that the petitioner, an Indian citizen, cannot be restrained to remain within the territorial jurisdiction of State of Punjab and is not permitted to leave the territory without intimating the concerned SHO, Police Station Phase-I SAS Nagar, Mohali, as the same would be an unreasonable restraint on his personal liberty, especially considering the fact that the instant case is triable by the Court of Magistrate and it will take sufficient long time for the trial to conclude. The petitioner, having his residence and business at Gurugram, Haryana, cannot be compelled to remain throughout in the State of Punjab with the condition that he will not leave the said territorial jurisdiction without intimating the concerned SHO of Police Station Phase-I SAS Nagar, Mohali. Therefore, this Court finds the aforesaid condition No.4 to be unjustified, hence, the same is liable to be set aside.

14. Resultantly, the present petition is partly allowed. Thereby, the order dated 04.03.2020 (Annexure P-2) passed by learned Judicial Magistrate First Class, SAS Nagar, Mohali is modified to the extent that condition No.4, i.e. "*accused will further not leave the territory of Punjab without intimating to the SHO concerned of police station, Phase-I, SAS Nagar, Mohali*" is ordered to be struck down and the impugned order dated 12.11.2021



(Annexure P-4) is partly set aside only qua condition No.4 (*supra*). It is made clear that all other conditions imposed in the order dated 04.03.2020 (Annexure P-2), except condition No.4, shall remain in force.

15. As stated above, learned counsel for the petitioner has not pressed the petition for modification of conditions No.1 and 2 imposed in the order dated 04.03.2020 (Annexure P-2) and is given liberty to move an appropriate application before the learned trial Court in accordance with law in case of any exigency.

16 Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

13.12.2024
S.Sharma(syr)

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |