

(2022) 03 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 1099 Of 2022

Manoj Kumar

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 14-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437A, 439, 446
Evidence Act, 1872 — Section 27

Citation : (2022) 03 P&H CK 0042

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Bhavdeep Singh Mamli, Karan Garg

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Sections

179

23.07.2021

DLF Phase-III, Gurugram

420, 467, 468, 471 IPC and Section 66 I.T. Act (added later on)

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, came up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.

2. In paragraph 11 of the petition, it is declared that the accused has no criminal history.

3. Ld. counsel for the petitioner contends the unscrupulous people took advantage of the loopholes and defects in the AADHAR software and its technology, and instead of improving the technology and fixing the bugs, the executive roped in the petitioner. Ld. counsel further submits that the pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

4. Ld. counsel appearing for the State contends that the petitioner has indulged in a heinous offence.

REASONING:

5. As per paragraph 5 of the bail application, the petitioner is incarcerated since 23- 07-2021, i.e., for more than six months, and coupled with the prolonged incarceration, the petitioner is a first offender, which would be one of the relevant factors to provide an opportunity to course-correct.

6. In *Gurbaksh Singh Sibbia v State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional Bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, (Para 18) a three-member Bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such person on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application. The courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In *State of Rajasthan v Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule might perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the Court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh when considering the question of jail. So also, the heinousness of the crime. In *Gudikanti Narasimhulu v Public Prosecutor*, (1978) 1 SCC 240, (Para 16), Supreme Court held that the delicate light of the law favors release unless countered by the negative criteria necessitating that course. In *Prahlad Singh Bhati v NCT, Delhi*, (2001) 4 SCC 280, Supreme Court highlighted one of the factors for bail to be the public or the State's immense interest and similar other considerations. In *Dataram Singh v State of Uttar Pradesh*, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is

unfettered, it must be exercised judiciously, compassionately, and in a humane manner. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

7. 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*, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

8. 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.

9. In *Mahidul Sheikh v. State of Haryana*, CRM-33030-2021 in CRA-S-363-2020, decided on 14-01-2022, Para 53, this Court observed,

"[53]. The pragmatic approach is that while granting bail with sureties, the "Court" and the "Arresting Officer" should give a choice to the accused to either furnish surety bonds or to handover a fixed deposit, or direct electronic money transfer where such facility is available, or creating a lien over his bank account. The accused should also have a further option to switch between the modes. The option lies with the accused to choose between the sureties and deposits and not with the Court or the arresting officer."

10. Given above, provided the accused is not required in any other case, the petitioner shall be released on bail in the FIR mentioned above, subject to furnishing a personal bond of Rs. Ten thousand (INR 10,000/-) and furnishing one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned Court/ Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any nearest Illaqa Magistrate/duty Magistrate. Before accepting the sureties, the concerned Court must satisfy that if the accused fails to appear in Court, then such surety is capable of producing the petitioner before the Court.

11. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the concerned Court a fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district. Said fixed deposit may be made from any of the banks where the stake of the State is more than 50%, or any of the well-established and stable private banks, with the clause of automatic renewal of the principal and the interest reverting to the linked account.

12. The fixed deposit need not necessarily be made from the petitioner's account. If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned court. If made online, its

printout, countersigned by the accused, shall be given; and the depositor shall get the online liquidation disabled. The applicant shall inform the concerned branch of the bank at the earliest that it has been tendered as surety. Such information be sent either by e-mail or by post/courier about the fixed deposit, whether made on paper or in any other mode, along with its number and FIR number. After that, the petitioner shall hand over such proof and endorsement to the concerned police station. Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, as the case may be. 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.

13. It shall be the total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply to the investigator or the concerned court to substitute fixed deposit with surety bonds and vice-versa.

14. On the reverse page of personal bonds, the attesting officer shall mention the permanent address of the petitioner along with the phone number linked with the AADHAR card, the other phone numbers (if any), and e-mail (if any). In case of any change in the above particulars, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change to the concerned Police Station and the concerned Court.

15. The petitioner 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 following and all other stipulations, terms, and conditions of this bail order.

16. 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 might be 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 and shall be let off before 6 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

17. 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.

18. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within ten days of release from prison and inform the Investigator about the compliance. However, subject

to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case.

19. 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 continue to remain in force throughout the trial and after that in terms of Section 437-A of the Cr.P.C.

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 bond amount beyond social and financial reach, it may be brought to the notice of this Court for appropriate reduction. Further, 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. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law.

23. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offence in this FIR, and if the new section prescribes maximum sentence which is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above, then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days providing an opportunity to avail the remedies available in law.

24. 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.

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

26. Given the nature of allegations, it is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal life but he did not mend his ways.

27. 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.