

(2021) 11 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 25231 Of 2021

Saloni Saluja

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 17-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437A

Citation : (2021) 11 P&H CK 0075

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Gourav Goel, Manish Bansal

Final Decision : Allowed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Sections

185

14.02.2020

Thanesar City, District Kurukshetra, Haryana.

420 of IPC and Section 10 of Immigration Act (Sections 406, 120-B, 467, 468 and 471 IPC and Section 24 of Immigration Act added later on)

1. The petitioner, who is a woman, incarcerated since 21.03.2020, for the offences of duping people by assuring them visa, has come up before this Court seeking regular bail.

2. In Para 3 of the bail application, learned counsel for the petitioner declares that 20 FIRs of similar nature are registered against the petitioner.

3. Briefly, the allegations against the petitioner are that on 14.02.2020, the complainant gave a written complaint to Superintendent of Police, Haryana Police Citizen Services. The complainant informed that Vishal Mann, Anita wife of Ramesh Kumar, Ravinder, Ranbir Singh, Darshani Devi, Saloni Saluja (petitioner) wife of Ravinder Singh, Raminder Singh and M/s New Direction Overseas, Kurukshetra have cheated him under the pretext of Visa. It is irrelevant to mention the minute details of the complaint and it is suffice to say that the complainant was defrauded by the accused by assuring him that they would arrange Visa for his daughter and son-in-law. Under the pretext of visa, they defrauded him of huge money. When the complainant came to know about the fraud, then the accused started threatening him by lodging false cases against him. Based on these allegations, the Police registered the FIR mentioned above. During investigation, the investigator arrested the petitioner Saloni Saluja allegedly on 21.03.2020.

4. Learned counsel for the petitioner submits that the petitioner has been granted bail in as many as 15 cases registered against her. He further submits that the main accused was her husband.

5. Learned Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. Learned State counsel submits that 24 FIRs of identical nature have been registered against the accused-petitioner and she is an habitual offender.

7. On the contrary, the contention on behalf of the State is that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

REASONING:

8. 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.

9. 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.

10. Needless to say that large number of FIRs prima facie points out towards the involvement of the bail petitioner in cases of cheating and fraud. However, her husband has also been arrested, which would somehow show that she might be involved indirectly with her husband having the main role. Be that as it may, the petitioner is in custody from 21.03.2020 i.e. around 1 year and 8 months. Since the petitioner is a woman, the Code of Criminal Procedure provides special provisions for bail to a woman.

11. Without commenting on the case's merits, given the investigation stage, the period of incarceration already undergone, and the circumstances peculiar to this case, the petitioners make a case for release on bail.

12. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of Cr.P.C., 1973.

13. 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 shall furnish one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the learned trial Court having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Illaqa Magistrate/Duty Magistrate. Before

accepting the sureties, the concerned Court must satisfy that in case the petitioners-accused fail to appear in Court, then such sureties are capable to produce the petitioners-accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

14. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order.

15. The petitioner to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioners also promise to appear before the higher Court in terms of Section 437-A Cr.P.C.

16. The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

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 gravity of accusations and the heinous nature of the offence, the petitioner shall surrender all weapons, firearms, ammunition, if any, along with the arms license to the concerned authority within 30 days from today 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 petitioners repeat 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 petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this

bail order, in vernacular and if not feasible, in Hindi.

21. In case the petitioners find the 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 petitioners 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 per law.

23. 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.

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

25. In the facts and circumstances peculiar to this case, the petition is allowed in the terms mentioned above.