

(2022) 02 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 4740 Of 2021

Sarwan Kumar

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 09-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 437A, 438, 446
Indian Penal Code, 1860 — Section 120B

Citation : (2022) 02 P&H CK 0033

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Rajesh Duhan, Rajat Gautam

Final Decision : Allowed

Judgement

Sr. No.,FIR No,Date,Offences,Police Station

1.,79,01.04.2020,"295, 436, 506 IPC",Sadar Kaithal

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 GudikantiNarasimhulu 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.,,,,

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, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that" ,,,,

unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC" ,,,,

570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between" ,,,,

the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions" ,,,,

countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.,,,,

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 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.,,,,

13. Given above, In the event of arrest, the petitioner shall be released on bail in the case mentioned above, subject to his furnishing a personal bond of" ,,,,

Rs. Ten Thousand only (INR 10,000/-), and furnishing one surety for Rs. Twenty-

Five thousand only (INR 25,000/-), to the satisfaction of the",,,,,

concerned Investigator. Before accepting the sureties, the concerned officer must satisfy that if the accused fails to appear in Court, then such surety",,,,,

is capable of producing the petitioner before the Court.,,,,,

14. In the alternative, the petitioner may furnish a personal bond of Rs. Ten Thousand only (INR 10,000/-), and hand over to the the attesting officer, a",,,,,

fixed deposit(s) for Rs. Ten Thousand only (INR 10,000/-), made in favour of Chief Judicial Magistrate of the concerned district.Such Fixed deposits",,,,,

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 principal, and the interest reverting to the linked account. The arresting officer shall give a time of ten working days to",,,,,

enable the accused to prepare a fixed deposit. Such a fixed deposit need not necessarily be made from the applicant'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 applicant shall hand over such proof and endorsement to the",,,,,

concerned police station. Such officer shall have a lien over the deposit until discharged by substitution, and in case any court takes cognizance, then",,,,,

such court, upon which the investigator shall hand over the deposit to such court, which shall have a lien over it up to the expiry of the period",,,,,

mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be. If any, 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.",,,,

15. It shall be the total discretion of the applicant to choose between surety bonds and fixed deposits. It shall also be open for the applicant to apply for,,,,

substitution of fixed deposit with surety bonds and vice-versa.,,,,,

16. 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.,,,,

17. 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.",,,,

18. 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.",,,,

19. 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 10 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.",,,,

20. Till the completion of the trial, the petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or",,,,

inappropriate, verbal or otherwise objectionable behavior towards the victim's family, either physically, or through phone call or any other social media,",,,,

through any other mode, nor shall unnecessarily roam around the victim's home.",,,,

21. 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",,,,

CrPC.,,,,

22. 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.,,,,

23. 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." ,,,,

24. 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." ,,,,

25. 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.,,,,

26. 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.,,,,

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

28. The SHO of the concerned police station or the investigating officer shall arrange to send a copy of this order, preferably a soft copy, to the" ,,,,

complainant and the victim, within two days. If the victim(s) notice any violation of this order, they may inform the SHO of the concerned police" ,,,,

station, the trial court, or even this court." ,,,,

29. 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." ,,,,