



CRM-M-13898-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13898-2024

Reserved on: 08.05.2024.

Pronounced on: 30.05.2024.

Veena Parmar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vijay Lath, Advocate
for the petitioner.Mr. Sukhdev Singh, A.A.G., Punjab
Mr. Kanav Bansal, D.A.G., Punjab and
Ms. Swati Batra, D.A.G., Punjab (through V.C.).Mr. R.S. Randhawa, Advocate - Amicus Curiae
Mr. Yugank Goyal, Advocate -Amicus Curiae

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0026	09.08.2023	Vigilance Bureau, Range Amritsar, District Amritsar, Punjab	409, 420, 120-B IPC and 13(1) (a) r/w 13(2) of PC Act, 1988

1. A woman, aged 75 years, who holds a degree in MD in pediatrics and has served as a Pediatrics as well a Professor in various prestigious medical colleges and hospitals, suffering from advanced carcinoma, apprehending arrest in the FIR captioned above, has come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 11 of the bail petition, the accused declares that she has no criminal antecedents.

3. Petitioner's counsel prays for bail by imposing any stringent conditions and further contends that custodial interrogation and pre-trial incarceration would cause irreversible injustice to the petitioner and family. Counsel for the petitioner has also permitted the Court to mention the petitioner's disease.

4. State's counsel opposes the bail.

5. Vide order dated 22.03.2024, this Court stayed the petitioner's arrest and, considering her critical health condition, permitted her to join the investigation through video conference instead of traveling all the way from the USA to Amritsar, Punjab.



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Counsel for the petitioner informed the Court that she had joined the investigation through video conferencing, and the State's Counsel did not dispute this fact.

6. While granting interim protection, this Court had also observed as follows, "Petitioner's medical condition is extremely worse, whether accused in such cases can furnish digital surety bonds (in electronic form) is a question before this Court." The Court had also appointed Ld. Amicus Curiae to assist. However, the Code of Criminal Procedure, 1973 will eclipse on 30-Jun-2024 and a new law, The Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS, 2023], prescribing criminal procedure will come into force with effect from 01-Jul-2024, as a consequence, this Court does not think it appropriate to answer the legal proposition leaving it open, and is confining the matter on merits. Consequently, Ld. Amicus Curiae are discharged with great appreciation for their assistance.

7. Prosecution case is being extracted from the reply dated 20.03.2024 filed by concerned DySP which reads as follows: -

"(4). That it is humbly submitted that the brief facts of the case are that the present FIR was registered by the deponent on 09.08.2023. The (deponent) received letter no.33690/VB/S-8 dated 09.08.2023 of Head Office Vigilance Bureau, Punjab and Diary no.7161 dated 09.08.2023 of SSP, Vigilance Bureau, Range Amritsar along with directions to lodge an FIR against petitioner and other accused. Whereby, Special Secretary of Rural Development and Panchayat of Punjab Government issued memo no.6/47/2023-3 RDE-3/5371 dated 07.08.2023 to Chief Director Vigilance Bureau, Punjab to register an FIR against Kuldeep Singh who was working as A.D.C. (Development), Pathankot at that time. It is submitted that the co-accused Kuldeep Singh wrongfully and maliciously decided the petition filed under Section 11 of the Punjab Village Common Land (Regulation) Act 1971 regarding Govt. land measuring 734 Kanals 1 Marla in favour of private persons in case titled as "Smt. Veena Parmar and others Versus Gram Panchayat Gol Block, Narot Jaimal Singh Tehsil and District Pathankot". In the said FIR, it has been written that Veena Parmar and others to get declared the ownership regarding the aforesaid land measuring 734 Kanals 1 Marla (shamlat land) in their favour filed a petition through their counsel on 13.12.2022. The aforesaid area of the land falls under 2(g)(iii) of Punjab Village Common Lands Act (Regulation) 1961. So, they want to get declared them as owner of the said Shamlat land. The co-accused Kuldeep Singh DDPO Retired working as A.D.C. (Development), Pathankot with the connivance of the accused persons and with malafide intention passed the order dated 27.02.2023 in favour of the persons against the instruction and Rule Regulations of the department.

In the aforesaid matter, Finance Commissioner Village Development and Panchayat created the committee of two enquiry officers vide order dated 18.07.2023. From the enquiry report dated 31.07.2023 conducted by the Enquiry Officers it was concluded that Kuldeep Singh then A.D.C. (Development), Pathankot now retired, on the third day of his posting as Collector Lands passed the orders regarding the land measuring 743 Kanals 1 Marlas Shamlat land of village Panchayat



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Gol in favour of the private persons. They further clarified that as per section 14 of Punjab Village Common Land Regulation Act, 1961, the exemption is only available in those circumstances when the order passed by the Officer is without any malafide intention or passed in good faith, but in the present case it is found that the said order was not passed in good faith, rather whole of the act of the Officer was with the malafide intention or with the connivance of the private persons. In these types of cases, the Hon'ble Courts have already decided and given powers that if any quasi-judicial officer will pass any order with malafide intent, then legal action can be initiated against such officer. As the wrongful act was committed by Kuldeep Singh, A.D.C. (Development), Pathankot by passing the order of the Shamlat land in favour of the private persons, hence he has committed the offence with the connivance of the private persons, Thus, a case FIR No. 26 dated 09.08.2023 u/s 409/420/120-B IPC & 13(1)(A), 13 (2) PC Act 1988 amendment Act 2018 Police Station Vigilance Bureau, Range Amritsar was registered against the petitioner namely 1) Kuldeep Singh DDPO Retired and other person namely 2) Smt. Veena Parmar (Petitioner), 3) Smt. Inderdeep Kaur, 4) Smt. Bharti Banta, 5) Smt. Tarsem Rani, 6) Smt. Balwinder Kaur, 7) Smt. Manjit Kaur and 8) Smt. Parveen Kumari. Som Raj @Tarsem Raj was further nominated as an accused during course of investigation."

8. The basis for the FIR was a quasi-judicial order passed by the Assistant Collector. The concerned Collector, while exercising its power, also exercised judicial functions in addition to executive functions. Further, the evidence is documentary, and there is no allegation of the petitioner's personal interaction with Mr. Kuldeep Singh ADC (Development). Thus, the case is primarily of documentary evidence. Even a prima facie perusal of paragraph 5 of the bail petition needs consideration for bail.

9. 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 require, 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



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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:INSC:107 [Para 7]**, (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 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. 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, given the nature of the allegations coupled with the fact that the petitioner is a first offender, and it is neither a case for the petitioner's custodial interrogation nor for pre-trial incarceration, and the present petition is allowed because for all these reasons, 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



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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. The petitioner's counsel brings to this Court's notice that the petitioner, Dr. Veena Parmar, is aged seventy-five, is suffering from advanced Myeloid Leukaemia, and is currently with her son who is taking her care and is getting treatment in Massachusetts, USA, and the residential address of USA is mentioned in the petition. He further submits that she cannot travel to India at this stage, and as such she be permitted to furnish her bail bonds digitally.

14. The petitioner's medical record, attached to the petition, corroborates the illness. The fact that the petitioner is in the USA is corroborated by a power of attorney attached to this petition, which bears the seal and stamp of the Notary Public of the Commonwealth of Massachusetts.

15. The petitioner apprehends arrest, and it is not the State's case that her apprehension is false; as such, she has a fundamental right to exercise her statutory right under S. 438 CrPC, 1973, seeking anticipatory bail. As stated above, this Court has allowed the petitioner's application for anticipatory bail. Anticipatory bail is a court's guarantee to the accused that in case of their arrest, the arresting officer shall release them on bail. However, this release is subject to compliance with statutory conditions and the bail order and is primarily an assurance to face the trial. The accused gives their assurance by furnishing personal and surety bonds regarding the bail order. Given this, the execution of bail bonds, if called upon by the Investigating Agency, is a necessary condition, failing which the order granting anticipatory bail would be inconclusive and would also eclipse if it contains a sunset clause.

16. It shall be appropriate to refer to the relevant provision of the Code of Criminal Procedure, 1973, [CrPC, 1973] which read as follows:

[S. 441 CrPC, 1973].

441. Bond of accused and sureties. —

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such



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person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

17. The format prescribed under Code of Criminal Procedure, 1973, [CrPC, 1973] reads as follows:

FORM No. 45
BOND AND BAIL-BOND FOR ATTENDANCE BEFORE OFFICER IN
CHARGE OF POLICE STATION OR COURT
[See sections 436, 2[436A,] 437, 3[437A,] 438 (3) and 441]
I, (name), of (place), having been arrested or detained without
warrant by the Officer in charge of police station (or having been
brought before the Court of), charged with the offence of , and
required to give security for my attendance before such Officer of
Court on condition that I shall attend such Officer or Court on
every day on which any investigation or trial is held with regard to
such charge, and in case of my making default herein, I bind
myself to forfeit to Government the sum of rupees.

Dated, this day of , 19 .
(Signature)

18. A perusal of the above clearly reveals that there is no statutory requirement that the accused must put their signatures in the presence of the Police officer or the Court.

19. Given the above, if the Investigator wants to arrest the petitioner, they shall inform her as well as her counsel by sending an e-mail and a message, on the e-mails of the petitioner and her counsel, as well as by sending messages (On normal message and/or on WhatsApp) to the petitioner's number as well as her counsel's phone number, giving them thirty days to handover the personal bonds signed by the petitioner at the place of her residence. The petitioner can send the bonds through her counsel in case she furnishes fixed deposit instead of surety and if she furnishes surety bond, then through her surety, and the Arresting Officer/Court, if they want to formally arrest her, shall release the petitioner on bail in the FIR captioned above in the following terms:



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(a). Petitioner to furnish a personal bond of Rs. One hundred thousand only (INR 100,000/). The petitioner may sign the requisite bail bond as per the applicable format, and send the signed copy through post/ Courier or deliver the physical copy to her counsel or surety, who shall forward the bond to the concerned Investigator/SHO, within 30 days of its receipt from the petitioner, i.e., not later than 60 days, if the Investigator conveys their desire of formal arrest, as has been mentioned above.

AND

(b) To give one surety of Rs. One lac (INR 100,000/-), to the satisfaction of the concerned Investigator/SHO, before whom the bonds are required to be furnished. If the bonds are to be furnished before a Judicial Magistrate, then in case of the non-availability of the concerned Judicial Magistrate, to any other nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned officer/court must satisfy that if the accused fails to appear in court, then such surety can produce the accused before the court.

OR

(b). The petitioner to hand over to the concerned court a fixed deposit for Rs. Twenty-five thousand (INR 25,000/-) 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 a 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



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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 petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number.	
3.	Mobile number (With WhatsApp enabled and working in USA)	
4.	E-Mail id	

20. Petitioner is permitted to join the investigation through video conferencing as and when called upon to do so by the Investigator. In case prosecution is launched, in that eventuality also, the petitioner is permitted to appear through her counsel and this bail is subject to the condition that the petitioner shall not claim any prejudice due to her appearance through her counsel. Petitioner is also permitted to appear through her counsel at the time of framing of charges, if the stage arises, and her counsel may put signatures on her behalf. In case the trial Court needs the physical appearance of the accused, the Court is requested to give at least two months notice to the petitioner considering the distant place she is living and her health condition. In such an event, it shall be permissible for the petitioner to seek exemption by citing health conditions, and if the need arises, to also avail legal redressal, before the appropriate Court, including this Court.

21. The petitioner shall not influence, browbeat, pressurize, or 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.

22. 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, and the victim/complainant may file any such application for the



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cancellation of bail, and the State shall file the said application.

23. 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.

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 a 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. *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 of.

(ANOOP CHITKARA)

JUDGE

30.05.2024

Jyoti Sharma/ Jyoti-II/ Anju/ AK

Whether speaking/reasoned: Yes
Whether reportable: **YES.**