

HIGH COURT OF PUNJAB AND HARYANA
Bench: HON'BLE MR. JUSTICE ANOOP CHITKARA
Date of Decision: 02.12.2023

CRM-M-55802-2023

Jaspal

...Petitioner

Versus

State of Punjab

...Respondent

Sections, Acts, Rules, and Articles mentioned in the judgment:

Section 439 CrPC (Code of Criminal Procedure)
Sections 420, 409, 467, 468, 471, 120-B IPC (Indian Penal Code)
Sections 7, 8, 12, 13(2) of Prevention of Corruption Act 1988 as amended by
PC (Amendment) Act 2018
S. 437-A CrPC, 1973

Subject of the Judgment:

The judgment deals with a bail application filed by the petitioner under Section 439 CrPC in a case involving charges of various sections of the Indian Penal Code (IPC) and the Prevention of Corruption Act. The judgment outlines the stringent bail conditions imposed on the petitioner and discusses the need to balance the accused's liberty with the necessity of a fair trial.

Headnotes:

Bail Application – Petitioner seeking bail under Section 439 CrPC in a case involving charges of 420, 409, 467, 468, 471, 120-B IPC, and Sections 7, 8, 12, 13(2) of Prevention of Corruption Act 1988 as amended by PC (Amendment) Act 2018 – State opposing bail – Bail granted with stringent conditions. [Para 1-8]

Nature of Offences – Economic offences of significant magnitude – Citing the completion of investigation and filing of the charge sheet, petitioner's pre-trial custody not necessary for further investigation – Grant of bail with strict conditions. [Para 9-10]

Strict Bail Conditions – Elaborative and stringent conditions imposed to ensure the accused's compliance and prevent any influence on witnesses or tampering with evidence – Reference to recent advancements in technology for identification techniques. [Para 11-13]

Specific Bail Conditions – Bail granted with conditions including personal bond, surety, or fixed deposit, and restrictions on the number of prepaid SIM cards – Non-compliance may lead to bail cancellation – Conditions aimed at securing the accused's presence and preventing interference with the investigation. [Para 14-18]

Balancing Rights – Emphasis on the need to balance the accused’s liberty and the necessity of a fair trial when imposing bail conditions – Bail conditions should not violate fundamental or human rights. [Para 19]

Modification of Conditions – Provision for the accused to file applications for modification of bail conditions if they find them violating their rights or causing difficulties. [Para 21]

No Expression of Opinion on Merits – Court clarifies that its observations in the order are not an expression of opinion on the case’s merits, and the trial court should not consider them during the trial. [Para 22]

Reciprocity Expected – Court expects the accused to reciprocate by demonstrating desirable behavior in return for the protection from incarceration. [Para 23]

Certified Copy of Order – Procedures outlined for obtaining a certified copy of the order for furnishing bonds. [Para 24]

Referred Cases with Citations:

Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40

Sushila Aggarwal v. State (NCT of Delhi), 2020:INSC:106

Madhu Tanwar v. State of Punjab, 2023:PHHC:077618

Vernon v. The State of Maharashtra, 2023 INSC 655

Mohammed Zubair v. State of NCT of Delhi, 2022:INSC:735

Representing Advocates:

Mr. Puneet Bali, Sr. Advocate with Ms. Vralika Bassi, Advocate and Mr. Nitin Kaushal, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. AG, Punjab, for the State of Punjab.

ANOOPANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
18	22.09.2022	Vigilance Bureau Range Jalandhar, District Jalandhar, Punjab	420, 409, 467, 468, 471, 120-B IPC and Sections 7, 8, 12, 13(2) of Prevention of Corruption Act 1988 as amended by PC (Amendment) Act2018

1. The petitioner incarcerated in the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.

2. In paragraph 22 of the bail petition, the accused declares that he has no criminal antecedents.
3. Petitioner's counsel prays for bail by imposing any stringent conditions and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other mobile numbers. The petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State opposes the bail.
5. Facts of the case are being taken from reply dated 20.11.2023 filed by the DySP, Vigilance Bureau, Unit SBS Nagar, which reads as follows:-

“3. That it is respectfully submitted that the brief facts of the present case are that the complainant namely Honey Kumar, President of The RS Cooperative Labour and Construction Society moved one complaint no. 23/2022 to Director, Vigilance Bureau, Punjab regarding scam in tenders for labour cartage in the Grain Markets, in which the complainant alleged that in the year 2020-2021, he had filed tenders for Nawanshahr and Rahon Clusters and PG Godown firm only at basic tender rates but both were rejected without any base and the tenders were awarded to contractor Telu Ram son of Darshan Lal for Nawanshahr Cluster at 71% higher rate and Rahon cluster at 72% higher rate. It was further alleged by the complainant that in the year 2022-23, he again submitted tenders at basic rate for labour works in Rahon cluster and Nawanshahr cluster through his above said society, but the same were rejected by the District Controller and authorized committee of PUNGRAIN in connivance with contractor Ajay Pal son of Mohan Lal. It was further alleged by the complainant that the District Allotment Committee had allotted the tenders to aforesaid contractor Ajay Pal for Nawanshahr Cluster at 73% higher rate and Rahon cluster at 72% higher rate while rejecting his tenders at basic rates and causing huge loss to the State Exchequer. The said complaint of the complainant was marked to Senior Superintendent of Police, Vigilance Bureau, Jalandhar Range by Director Vigilance Bureau, Punjab and Senior Superintendent of Police, Vigilance Bureau, Jalandhar further entrusted the said complaint to Deputy Superintendent of Police, Vigilance Bureau Unit Shaheed Bhagat Singh Nagar for conducting inquiry

4. That it is respectfully submitted that during the course of inquiry, the documents submitted by contractor Yashpal Jaspal (petitioner) while submitting transportation tenders for Nawanshahr-2 (Rahon) cluster in year 2020-21 were also inspected by the inquiry officer and it was found that the list of vehicles submitted by the petitioner contained the registration numbers of scooters and motorcycles Moreover, it was also transpired that out of the said vehicles, some had not even paid taxes.

5. *That it is respectfully submitted that during inquiry, it was further revealed that the District Allotment Committee had not verified the documents while allotting tenders to contractor/petitioner but the said committee had rejected the tenders submitted by other tenderers at basic rates after showing irregularities in their documents, which itself shows the connivance of some government officials. It is further transpired that the documents submitted by complainant while submitting his tender for the year of 2022-2023 included adhar cards of minors and adhar cards which were not readable, due to which, the tender of the complainant was rejected by the allotment committee. It was further submitted that the contractor Ajay Pal had also submitted adhar cards of minors as well as the adhar cards which could not be readable while filling his tender, despite that the allotment committee had granted him tender but his tender had to be rejected. The official of allotment committee had accepted the tenders of aforesaid contractors at higher tender rates while rejecting the tenders of contractors at basic tender rates after ignoring all the above irregularities. In this manner, these persons have caused huge loss to the State Exchequer. The inquiry officer further recommended to register the case against all of the aforesaid persons namely Telu Ram son of Darshan Lal, Yashpal @ Jaspal son of Mohan Lal (petitioner) and Ajay Pal son of Mohan Lal, residents of Udhanwal, District Shaheed Bhagat Singh Nagar and submitted his report to Senior Superintendent of Police, Vigilance Bureau, Jalandhar Range and the same was approved by the Senior Superintendent of Police, (VB) Jalandhar Range and forwarded to Director, Vigilance Bureau, Punjab. On the basis of which, FIR no. 18 dated 22.09.2022 u/s 420,409,467,468,471,120-B IPC and section 7,8,12,13(2) of PC Act 1988 as amended by PC (Amendment) Act 2018 was registered against Telu Pam son of Darshan Lal, Yashpal Jaspal son of Mohan Lal (petitioner) and Ajay Pal son of Mohan Lal, residents of Udhanwal, District Shaheed Bhagat Singh Nagar at police station Vigilance Bureau, Range Jalandhar.”*
6. Role of the petitioner is mentioned in paras 9 to 13 of the reply, which reads as under:-
9. *That it is respectfully submitted that during the course of investigation of the present case, it was transpired that the petitioner/accused while filling tenders for transport cartage for the year of 2020-21 for Nawanshahr-1 Cluster, provided the list of total 218 vehicles for the work of transportation of paddy/wheat/stock but on inquiry from the office of concerned Regional Transport Officer, it was revealed that in the list of 218 vehicles provided by petitioner/accused, there were 17 vehicles, which could not be used for the transportation of paddy/wheat/stock and the said 17 registration numbers have been allotted to vehicles such as Mahindra car, Maruti car, tractor, motorcycles, tanker, tractor trailer, close body truck, trailer etc. It is further submitted that during investigation it was further revealed that the list of vehicles uploaded by the petitioner while filling the tender were included total 55 vehicles for which road tax were not paid.*
10. *That it is respectfully submitted that during the course of investigation, it was further revealed that the list of vehicles uploaded by the petitioner/accused at the time of filling tender (online tender) were not actually used for transportation of paddy/wheat/stock.*
11. *That it is respectfully submitted that during the course of investigation, the department of PUNGRAIN provided the list of gate pass of vehicles used*

for loading/unloading the stock (as per the record of PUNGRAIN) by the petitioner, which were further got verified from the office of concerned Regional Transport Officer, and on inquiry, it was revealed that the list of gate passes of vehicles used for loading/unloading stock containing total 355 list of vehicles, however, there were 06 vehicles in such list, which could not be used for the transportation of paddy/wheat/stock and the said 06 registration numbers have been allotted to vehicles such as Chetak scooter, Vespa scooter, Hero Honda motorcycle etc.

12. *That it is respectfully submitted that during investigation, the statements of Balwant Singh, Junior Assistant, posted at office of Regional Transport Authority, Jalandhar and presently posted at RTA, office Bathinda and Davinder Singh, Motor Vehicle Inspector, Nawanshahr and Hoshiarpur were recorded, wherein they stated that the vehicles such as pick up, close body truck, tractor trailer, container and trailer cannot be used for transportation of wheat/paddy. Copy of statements of Balwant Singh and Davinder Singh are annexed herewith as Annexure R1/F and R2/T respectively.*

13. *That it is further submitted that as per sub clause "A" of Clause 5 of The Punjab Food Grains Labour & Cartage Policy 2020-2021, it has been specifically mentioned that the vehicles having minimum 9 MT carrying capacity can only be used for the transportation of paddy/wheat. In this regard, statement of Surinderjit Singh, Inspector PUNGRAIN, District SBS Nagar son of Harjit Singh, resident of village Koom Khurd, Tehsil & District Ludhiana was also recorded and the same is annexed herewith as Annexure R3/T. It is further submitted that the list of vehicles uploaded by the present petitioner while filling his tender also contains vehicle having registration no. PB-32-B-3091, PB-07-AF-3117, PB-32-H-0192 and PB-22-K-2242 and as per the record of Regional Transport Office, these numbers are allotted to vehicles such a Pick-up and canter (Eicher) and these vehicles are having actual capacity of loading below 9 MT."*

7. Petitioner's counsel seeks bail on the grounds that similarly placed co-accused have been granted regular bail. He further submits that after dismissal of his anticipatory bail by this Court vide order dated 18.09.2023 passed in CRM-M-172152023. Petitioner had approached the Hon'ble Supreme Court of India and on 09.10.2023, when the matter was listed before the Hon'ble Supreme Court, petitioner's counsel had sought liberty to withdraw the petition to enable them to surrender and apply for regular bail. On this Supreme Court of India granted two weeks time to the petitioner for surrender and apply for regular bail. Hon'ble Supreme Court of India had also reserved that if the petitioner surrenders within two weeks then the concerned Court shall deal with the bail expeditiously on its merits. On this, the petitioner had surrendered on 21.10.2023 i.e. within the period of two weeks and after that the petitioner had filed anticipatory bail before the Sessions Court Ludhiana and vide order dated 26.10.2023, the Sessions Court dismissed the bail.

8. I have perused the order passed by the of Sessions Judge/Special Judge under the Prevention of Corruption Act, SBS Nagar, which is on merits. However the fact is that the petitioner's pre-trial custody is now more than one month and 10 days. Furthermore the fact that similiary placed co-accused had already been granted regular bail by this Court, there would be no justification for further pre-trial incarceration.
9. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.
10. In *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40, Supreme Court holds,
[28] We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.
11. 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.
12. 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.
13. 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 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.

14. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, in the following terms:

(a). Petitioner to furnish personal bond of Rs. Ten thousand (INR 10,000/);
AND

(b) To give one surety of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the concerned court, and in case of non-availability, to any 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). Petitioner to hand over to the concerned court a fixed deposit for Rs. Ten thousand only (INR 10,000/-), 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 the 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 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:

6

1.	AADHAR number	
2.	Passport number, (If available), when the court attesting the bonds, thinks appropriate or considers the accused as a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

15. 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.

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

17. The petitioner is directed not to keep more than one prepaid SIM, i.e., one prepaid mobile phone number, till the conclusion of the trial; however, this restriction is only on prepaid SIMs [mobile numbers] and not on post-paid connections or landline numbers. The petitioner must comply with this condition within fifteen days of release from prison. The concerned DySP shall also direct all the telecom service providers to deactivate all prepaid SIM cards and prepaid mobile numbers issued to the petitioner, except the one that is mentioned as the primary number/ default number linked with the AADHAAR card and further that till the no objection from the concerned SHO, the mobile service providers shall not issue second pre-paid SIM/ mobile number in the petitioner's name. Since, as on date, in India, there are only four prominent mobile service providers, namely BSNL, Airtel, Vodafone-Idea, and Reliance Jio, any other telecom service provider are directed to comply with the directions of the concerned Superintendent of Police/Commissioner of Police, issued in this regard and disable all prepaid mobile phone numbers issued in the name of the petitioner, except the main number/default number linked with AADHAR, by taking such information from the petitioner's AADHAR details or any other source, for which they shall be legally entitled by this order. This condition shall continue till the completion of the trial or closure of the case, whichever is earlier. In Vernon v. The State of Maharashtra, 2023 INSC 655, [para 45], while granting bail under Unlawful Activities (Prevention) Act, 2002, Supreme Court had directed imposition of the similar condition, which reads as follows, "(d) Both the appellants shall use only one Mobile Phone each, during the time they remain on bail and shall inform the Investigating Officer of the NIA, their respective mobile numbers."
18. 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 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.

19. The conditions mentioned above imposed by this Court are to endeavour that the accused tries to reform, does not repeat the offence and to provide a sense of security to the victim. In *Mohammed Zubair v. State of NCT of Delhi*, **2022:INSC:735 [Para 28]**, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A ThreeJudge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."
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 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. 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.
23. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
24. *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.

*Disclaimer: Always compare with the original copy of judgment
from the official website.