



CRM-M-46067-2023

228

CRM-M-46067-2023

ASHISH KAPOOR VS. STATE OF PUNJAB

Present: Ms. Kamal Kapoor, wife of petitioner in person.

DSP Saravjeet Singh in person for State.

\*\*\*\*

FIR No.	Dated	Police Station	Sections
21	30.05.2023	Vigilance Bureau, Phase-1, District SAS Nagar, Mohali	13(1) (b) read with Section 13(2) of Prevention of Corruption Act, 1988 and 120-B IPC

Bar is abstaining from work today.

1. The petitioner, incarcerated upon his arrest in the FIR captioned above, has come up before this Court under Section 439 of Code of Criminal Procedure, 1973 (CrPC) seeking bail.
2. Short reply dated 25.09.2023 filed by DSP Saravjeet Singh today in the Court is taken on record.
3. In paragraph 35 of the bail application and short reply dated 25.09.2023, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offences	Police Station
1.	3	---	7, 7A, 13 of Prevention of Corruption Act, 1988 and 376 IPC	---
2.	17	06.10.2022	7, 7A of Prevention of Corruption Act (Amendment), 1988 and 420, 120-B IPC	Vigilance Bureau Flying Squad-1, SAS Nagar
3.	4	30.12.2022	376(2) (a), 376 (2) (b), 376 (2) (d), 376-C IPC	Punjab State Crime, SAS Nagar
4.	208	17.07.2023	327, 323, 294, 506, 120-B IPC	Zirakpur, SAS Nagar

4. Ms. Kamal Kapoor wife of the petitioner is present in person and submits that she would have no objection in declaring of assets by the petitioner and herself and also voluntarily agreeable to the condition that till the conclusion of the trial, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, if any, and



## CRM-M-46067-2023

within fifteen days undertakes to disconnect all other mobile numbers. She further submits that initially her husband was arrested in the main FIR No. 17 dated 06.10.2022 on 06.10.2022. After that, another FIRs were registered and the present FIR is registered the disproportionate asset and he was arrested in this case on 31.05.2023. As per petitioner's wife, the petitioner got bail in the main FIR but in the present FIR, he is in custody. Considering the total custody of the petitioner in both the cases which is around one year, petitioner is entitled for bail. The wife of the petitioner contends that the further pre-trial incarceration would cause an irreversible injustice to the family.

### REASONING:

5. In *Maulana Mohd Amir Rashadi v. State of U.P.*, (2012) 3 SCC 382, Hon'ble Supreme Court holds,

[10] It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.

6. While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. As per reply dated 25.09.2023, the petitioner is in custody since 31.05.2023. 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. Thus, the previous criminal history of the petitioner is not being considered strictly at this stage as a factor for

**CRM-M-46067-2023**

denying bail.

8. 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.

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 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.

10. This interim shall continue only till the disposal of the petition. However, if the petition is allowed, then it shall continue for the entire trial, subject to the terms and conditions mentioned in the order.

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 *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.

**CRM-M-46067-2023**

[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. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on interim bail till the next date of hearing 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 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 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 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



**CRM-M-46067-2023**

order.

(e). While furnishing personal bond, the petitioner shall mention the following personal identification details:

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)	

14. 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.

15. 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 or in earlier orders. 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.

16. 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



**CRM-M-46067-2023**

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."

17. Within fifteen days, the petitioner shall handover his two notarized affidavits, and also two notarized affidavits of his spouses(s) if any, [One set for Investigator and one for the petitioners' employer], mentioning the complete following details, held either individually or jointly, and cash-in-hand. *If the petitioner(s) fail to comply with this condition, then on this ground alone, this Court shall consider to recall the order.* The petitioner(s) and his spouses(s) to declare their all assets in the following formats in Rupees (INR):

<b>Total value of all net worth as on 31 Mar 2023</b>	
<b>Current total value of all net worth</b>	
<b>Cash in hand as on date (Indian Rupee)</b>	
<b>Cash in hand as on date (All other currencies)</b>	
<b>Details of all bank accounts</b>	
<b>Current amount in cash, savings, checking, deposit accounts and crypto currency</b>	
<b>Total Value of equity shares &amp; mutual funds as on 31 Mar 2023</b>	
<b>Current total Value of equity shares &amp; mutual funds</b>	
<b>Total Value of recurring deposit, fixed deposits, bonds, pension plans, &amp; annuity insurance policies as on 31 Mar 2023</b>	
<b>Current total Value of recurring deposit, fixed deposits, bonds, pension plans, &amp; annuity insurance policies</b>	
<b>Current total market value of all jewellery, sovereign metals, artefacts, antiques etc.</b>	
<b>Current total market value of property including buildings, land etc. its area and location</b>	
<b>Total income in FY 2022-23 including farms, agriculture, horticulture, wages, salaries, commissions, interests, royalties, rent, income, or gifts received from other family members</b>	



CRM-M-46067-2023

Enter the details of vehicles owned or in possession	
Any other asset or income	
Total liabilities as on 31 March 2023 (Including loans)	
Current total liabilities (Including loans)	
Approximate expenditure during FY 2022-23	
Any other expenses	

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 an opportunity to the victim to consider legal remedies for recovery of the amount. 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 Three-Judge 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 the 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

**CRM-M-46067-2023**

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.*

List on 03.10.2023.

**(ANOOP CHITKARA)**  
**JUDGE**

**26.09.2023**

Jyoti-II