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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P.No.1395 of 2020

Bhagwat Joshi @ Shankar Lal Joshi, Kaliram Joshi, aged about 40 years, R/o Village Ravanguda, P.S. Arjuni, District Dhamtari, Chhattisgarh

---- Petitioner

Versus

State of Chhattisgarh, through S.H.O. Police Station Ranchirai, District Balod Chhattisgarh

---- Respondent

For Petitioner : Mr.B.P.Singh, Advocate
For Respondent : Mr.Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

01.12.2020

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"The delicate light of the law favours release unless countered by the negative criteria necessitating that course. The corrective instinct of the law plays upon release orders by strapping on to them protective and curative conditions. Heavy bail from poor men is obviously wrong. Poverty is society's malady and sympathy, not sternness, is the judicial response."

1. The above-stated statement of law rendered by V.R. Krishna Iyer, J. speaking for the Supreme Court in the matter of **Babu Singh & others v. The State of U.P.**[1] (Para-23) aptly applies to the facts of the present case as the trial Magistrate while admitting the accused to be privilege of bail imposed a stringent

1 (1978) 1 SCC 579

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condition of furnishing bank guarantee of 2 lakhs, which is subject-matter of this petition.

2. The petitioner is an accused standing trial for offence under Section 420/34 of the IPC. He made an application under Section 437 of the CrPC for grant of bail and eventually that application was granted by learned Magistrate with a condition of furnishing bank guarantee of ₹ 2,00,000/- or cash. On revision being preferred by the petitioner, learned First Additional Sessions Judge, Balod partly allowed the revision and reduced the amount of bank guarantee from ₹ 2,00,000 to ₹ 1,00,000 and also directed for furnishing bail bond of ₹ 10,000/- in addition to bank guarantee.

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3. Questioning the legality and correctness of order passed by learned Additional Sessions Judge directing the petitioner to furnish bank guarantee of one lakh, this petition under Section 482 of the CrPC has been preferred.

4. Mr.B.P.Singh, learned counsel for the petitioner, would submit that the petitioner is small agriculturist and residing in small village and that the condition imposed is excessively onerous and it would amount to denial of bail itself and that would be in violation of personal liberty of the petitioner, therefore, stringent condition imposed by learned

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Magistrate while granting bail deserves to be set aside.

5. On the other hand, Mr.Jitendra Pali, learned Deputy Advocate General for the respondent/State, would submit that it is purely a judicial order and the State has limited role, but the condition should be reasonable.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

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7. At this stage, it would be appropriate to notice Section 437(3) of the CrPC which provides as under:-

> "437 (3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the conditions,-
> (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
> (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
> (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

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and may also impose, in the interests of justice, such other condition as it considers necessary."

8. It is well settled law that while exercising jurisdiction under Section 437/439 of the CrPC, it is duty of the Court to see that condition for grant of bail should not be arbitrary or capricious, it should be just and reasonable and it cannot insist the accused to give cash security or to provide local surety. An essential requirement in the imposition of any condition is that it should result in minimum interference with the personal liberty of accused and rights of police to investigate the case. A balance should be maintained between the personal liberty of the accused and investigational right of police.

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9. The Supreme Court in the matter of **Hussainara Khatton and others v. Home Secretary, State of Bihar, Patna**[2] has held that the decision as regards the amount of bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. It was further held that the amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of charge, otherwise it would be difficult

2 AIR 1979 SC 1360

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for the accused to secure his release even by executing a personal bond.

10. The Supreme Court in its celebrated judgment, **Moti Ram and others v. State of Madhya Pradesh**[3] their Lordships have held that when sureties should be demanded and what sum should be insisted on are dependent on variables and the Court should be liberal in releasing them on their own recognizances by imposing reasonable conditions and held as under:-

> "32. It shocks one's conscience to ask a mason like the petitioner to furnish sureties for Rs. 10,000. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by 'We, the People of India', is meant for the butcher, the baker and the candle-stick maker-shall we add, the bounded labour and pavement dweller."

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11. In **Moti Ram** (supra), their Lordships deprecated the practice of demanding heavy sums by way of bail. V.K. Krishna Iyer, J. speaking for the Supreme Court held as under:-

> "4....The victims, when suretyship is insisted on or heavy sums are demanded by way of bail or local bailors alone are *persona grata*, may well be the weaker segments of society like the proletariat, the linguistic and other minorities and distant denizens from the far corners of our country with its vast diversity. In fact the grant of bail can be stultified or made impossibly inconvenient and expensive if the Court is powerless to dispense with surety or to receive an Indian bailor across the district borders as good or the sum is so excessive that to procure a wealthy surety may

3 (1978) 4 SCC 47

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be both exasperating and expensive. The problem is plainly one of human rights, especially freedom vis-a-vis the lowly....."

12. In the matter of **Keshab Narayan Banerjee and another v. The State of Bihar**, it has been held by the Supreme Court that accused required to furnish security for rupees one lakh in cash or in fixed deposit of any nationalised bank in Bihar with two sureties residing in the State of Bihar each for a like amount appears to be excessively onerous and it virtually amounts to denial of bail itself.

13. In the matter of **K.L. Verma v. State and another**[4] their Lordships of the Supreme Court have held that while granting bail conditions can be imposed for securing the rights of the investigating agency to proceed with the investigation, fairly and properly. In imposing conditions, the Court must be extremely chary and see that they maintain a balance between the personal liberty of the accused and investigational rights of the police.

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14. Similar proposition has been laid down by the Supreme Court in the matter of **Sumit Mehta v. State (NCT of Delhi)**[5] in which it has been held as under:-

"11. While exercising power under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to

4 (1998) 9 SCC 348
5 (2013) 15 SCC 570

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personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the Court while imposing conditions must be exercised with utmost restraint.

12. The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.

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13. We also clarify that while granting anticipatory bail, the Courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the Court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the Courts are duty bound to impose appropriate conditions as provided under sub-section (2) of Section 438 of the Code.

14. Thus, in the case on hand, fixed deposit of Rs. 1,00,00,000/- for a period of six months in the name of the complainant and to keep the FDR with the investigating officeRs.r as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the Court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature

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is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams etc.

15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."

15. It is quite vivid from the principle of law laid down by their Lordships of the Supreme Court in above-stated judgments (supra) that while granting bail condition imposed should be not be stringent and it should be reasonable, otherwise, it would amount to denial of bail and that further amount to denial and deprivation of personal liberty of the accused violating his constitutional right guaranteed under Article 21 of the Constitution of India.

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16. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that in the instant case, though the accused has been admitted to the privilege of bail under Section 437 of the CrPC and he is only a small agriculturist, yet stringent and onerous condition of

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furnishing bank guarantee of ₹ 2,00,000/- was imposed by the trial Magistrate though that has partly been modified by the revisional Court from ₹ 2,00,000/- to ₹ 1,00,000/-, but still condition of furnishing bank guarantee of ₹ 1,00,000/- is stringent and excessively onerous condition, which cannot be said to be reasonable condition for grant of bail in the light of aforesaid mandate of the Supreme Court noticed hereinabove.

17. Accordingly, the condition imposing bank guarantee of ₹ 1,00,000/- is hereby set-aside and the accused will be released forthwith on bail on furnishing bail bond of ₹ 20,000/- to the satisfaction of the trial Court.

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18. The petition under Section 482 of the CrPC is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. No.1395 of 2020

Petitioner Bhagwat Joshi

Versus

Respondent State of Chhattisgarh

(Head-note)

(English)

The Condition for grant of bail should not be stringent, as it would violate the accused right of personal liberty under Article 21 of the Constitution of India.

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(हिन्दी)

जमानत देने हेतु शर्त कठोर नही होनी चाहिए, क्योंकि यह भारतीय संविधान के अनुच्छेद–21 के तहत आरोपी के व्यक्तिगत स्वतंत्रता के अधिकार का हनन करेगा।

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