



THE GAUHATI HIGH COURT

**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)**

Case No. : W.P.(Crl.)/4/2021

HAFIKUR ALI
S/O CHAUKAT ALI,
VILL SEMINA, PS PALASHBARI, DIST KAMRUP ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR F KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH

ORDER

09.06.2021

The Court proceedings have been conducted through Video Conference.

2. Heard Mr. F. Khan, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Additional Senior Government Advocate, Assam, appearing for the State respondent.
3. The present petition has been filed under Article 226 and 227 of the Constitution of India being aggrieved by certain condition imposed while granting bail in the order dated 05.05.2021 passed by the learned Judicial Magistrate, First

Class, Kamrup, Amingaon in Palashbari P.S. Case No.56/2021 under Section 379/411 of the Indian Penal Code.

4. By the said order while granting bail to the elder brother of the petitioner, the learned Judicial Magistrate, First Class put a condition that the bail bond shall be taken only after completion of quarantine period of the accused who is in jail hazot. It has been submitted that once the learned Magistrate had granted bail, the only permissible conditions which could be imposed were as regards the amount of the PR bond or of the surety or any such condition that may be attached for compliance of bail but not any condition which would have the effect of deferring the release of the accused. In the present case it has been submitted that the Ld. Magistrate has put certain condition which in effect deferred the release on bail.

5. To appreciate the submission of the learned counsel for the petitioner, it may be apposite to produce the relevant portions of the impugned order passed by the Ld. Judicial Magistrate, First Class, Kamrup, Amingaon, on 05.05.2021 as follows:

“

Perused the same along with the case record and it is seen that co-accused had already been released on bail and the case diary reflects that the investigation is almost in the verge of completion and the diary has not been updated since 21.04.2021.

Heard the Ld APP for the state as well as the ld counsel for the accused.

Considering the prayer of the ld counsel for the accused person and the submission of the Ld APP for the state and the above all aspects, I am of the humble opinion that there is no any chance of hampering and tempering of the investigation by the said accused person while all the co-accused had already been released.

Thus, I deem it fit and proper to allow the bail petition no 210/2021 and allow the accused person, **Md Hafijur Rahman to be released on execution of a bail bond of Rs 10,000/- each with one local surety.** i/d jail hazut with a condition that the named accused person shall remain within the jurisdiction of this case till the

submission of the charge sheet and shall aid in the investigation of the instant case, whenever asked for.

It is also to be noted that the bail bond shall be taken only after the completion of quarantine period of the accused, in jail hazut.
....." *(emphasis added)*

6. Mr. Nath, Ld. State Counsel however, submits that the State had to merely comply with the direction of the judicial order passed by the Ld. Magistrate and as such, the State has nothing to submit on this score, as it is a judicial order.

7. Perusal of the aforesaid order passed by the learned Magistrate would clearly indicate that the Ld. Magistrate had granted bail to the petitioner's brother, the accused, on execution of a bail bond of Rs. 10,000/- with one local surety of like amount and that the accused shall remain within the jurisdiction of the Court till submission of charge-sheet and shall render all necessary aid in the investigation of the case whenever directed to do so. However, the Ld. Magistrate also added another condition directing that the bond shall be taken only after completion of the quarantine period of the accused who is in jail hazot. It is this condition which the petitioner is aggrieved of.

8. In the opinion of this Court, the submission advanced by the learned counsel for the petitioner that this additional condition imposed to accept the bail bond after completion of quarantine period amounts to frustrating early release of the accused on bail and hence impermissible, appears to be well founded.

9. Once the court had decided to grant bail with the usual conditions, perhaps the court ought not to have imposed any other condition which is not related to the grant of bail or which will have the effect of deferring the release of the accused from jail. After a bail has been granted and subject to fulfilment of the normal conditions of bail, the accused will have right to be released from the jail, even if he is afflicted with Covid. He cannot be continued to be put under jail quarantine without his consent, as he is otherwise freed from custody on bail. He would have a right to be shifted from the jail premises to another location, which decision is to be taken by the competent authority under the aforesaid Act, based

on various factors and considerations, and continued stay in the jail premises would certainly deny him the freedom. It would be responsibility of the Jail authorities to shift such a released person if in quarantine in the jail, if he insists, to such appropriate location in consultation with the competent authority under the aforesaid Act, depending on the medical condition of the person.

10. The aforesaid impugned condition imposed on the bail also places a fetter on the competent authorities under the Disaster Management Act, 2005 to take appropriate decision for shifting to another alternative location.

11. As to whether how long a person will be kept in quarantine is a matter which is within the realm of the District Disaster Management Authority under the Disaster Management Act, 2005, which has apparently no relevance as far as release of an accused on bail which is considered on merit of the case and not whether he is in quarantine or not, though physical ailment can be a ground for release from jail for better treatment outside the jail. In the present case, the accused was released bail on the ground that the co-accused has been already released on bail and the investigation is in the verge of completion and that there is no possibility for hampering the investigation and tempering with evidence. The bail was not granted on account of the Covid with which the accused was afflicted.

12. It is well settled that while granting bail, the court imposes such conditions as it considers appropriate to ensure that the accused person is readily available for investigation and face the trial, to avoid the possibility of the person hampering the investigation, to prevent the accused person fleeing from justice or tamper with the evidence, influence the witnesses etc. [**See *Sanjay Chandra v. CBI*, (2012) 1 SCC 40; *M. Sreenivasulu Reddy v. State of T.N.*, (2002) 10 SCC 653S; *State of Bihar v. Rajballav Prasad*, (2017) 2 SCC 178, *State of Bihar v. Rajballav Prasad*, (2017) 2 SCC 178; *Sushila Aggarwal v. State (NCT of Delhi)*, (2020) 5 SCC 1].**

13. In this regard, one may notice certain typical conditions which the court can impose while granting bail as indicated by the Apex Court in ***Sushila Aggarwal***

v. State (NCT of Delhi), (2020) 5 SCC 1, though these were in the context of anticipatory bail, as follows:

“7.4. The aforesaid decision of the Constitution Bench in *Gurbaksh Singh Sibbia* [*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] holds the field for number of years and the same has been followed by all the courts in the country. While granting anticipatory bail, normally following conditions are imposed by the court/courts which as such are in consonance with the decision of the Constitution Bench in *Gurbaksh Singh Sibbia* [*Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] and Section 438(2) read with Section 437(3) CrPC:

1. The applicant, namely, _____ shall furnish personal bond of Rs _____ with his recent self-attested photograph and surety of the like amount on the following conditions at the satisfaction of the investigating officer;
2. The applicant shall remain present before the police station concerned on _____ between _____;
3. The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;
4. The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
5. The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
6. The applicant shall not leave the territory of _____, without prior permission of the court, till trial is over;
7. The applicant shall mark his presence before police station concerned on _____ between _____ for the period of six months, from the date of this order;
8. The applicant shall maintain law and order;
9. The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
10. The applicant shall surrender his passport, if any, before the investigating officer within a week and, if he does not possess any passport, he shall file an affidavit to that effect before the investigating officer;
11. The applicant shall regularly remain present during the trial, and cooperate with the Hon'ble court to complete the trial for the above offences.

If breach of any of the above conditions is committed, the order of anticipatory bail would be cancelled. It would be open to the investigating officer to file an application for remand, and the

Magistrate concerned would decide it on merits, without being influenced by the grant of anticipatory bail order.”

14. What one can notice is that aforesaid conditions have a direct nexus with the purpose of granting bail, i.e., to ensure that the accused person is readily available during the investigation and trial and to prevent the accused person fleeing from justice, to prevent him from hampering investigation and tampering with the evidence, intimidating witness etc. These conditions are essentially to ensure that the criminal justice system does not get obstructed because of the freedom granted to an accused on bail.

At the same time, it has to be also ensured that such conditions are reasonable, and not illusory or impracticable.

As a corollary, any such condition which do not have a nexus with the purpose of granting bail and with the smooth administration of criminal justice, cannot be part of such conditions.

15. In this regard, one may refer to the decision of the Apex Court in ***Parvez Noordin Lokhandwalla v. State of Maharashtra, (2020) 10 SCC 77*** wherein it was held as follows:

“14. The language of Section 437(3) CrPC which uses the expression “any condition ... otherwise in the interest of justice” has been construed in several decisions of this Court. Though the competent court is empowered to exercise its discretion to impose “any condition” for the grant of bail under Sections 437(3) and 439(1)(a) CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.

15. In *Kunal Kumar Tiwari v. State of Bihar* [*Kunal Kumar Tiwari v. State of Bihar, (2018) 16 SCC 74 : (2019) 4 SCC (Cri) 727*], the appellant who was alleged to have committed offences under Sections 498-A, 341, 323, 379 and 506, read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 was denied [*Kunal Kumar Tiwari v. State of Bihar, 2017 SCC OnLine Pat 2077*] · [*Kunal Kumar Tiwari v. State of Bihar, 2017 SCC OnLine Pat 2076*] anticipatory bail by the High Court. However, the High Court directed that if the appellant was willing to treat his wife with

dignity and care but she refuses to live with him or both parties prefer to obtain a divorce by mutual consent, the court below would release the appellant on provisional bail. The trial court was permitted to confirm the provisional bail after one year and was directed to monitor the relationship between the parties, who would appear before it every three months. This Court, while holding that the conditions imposed by the High Court on grant of bail were onerous and arbitrary, observed: (*Kunal Kumar Tiwari case* [*Kunal Kumar Tiwari v. State of Bihar*, (2018) 16 SCC 74 : (2019) 4 SCC (Cri) 727] , SCC p. 78, paras 9-11)

“9. ... clause (c) of Section 437(3) allows courts to impose such conditions in the interest of justice. We are aware that palpably such wordings are capable of accepting broader meaning. But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase “interest of justice” as used under the clause (c) of Section 437(3) means “good administration of justice” or “advancing the trial process” and inclusion of broader meaning should be shunned because of purposive interpretation.

10. ... from the perusal of the impugned order it is clear that the court exceeded its jurisdiction in imposing such arbitrary conditions. Some of the conditions imposed are highly onerous and are absurd. Such onerous anticipatory bail conditions are alien and cannot be sustained in the eye of the law. The conditions imposed appear to have no nexus with the good administration of justice or advancing the trial process, rather it is an overzealous exercise in utter disregard to the very purpose of the criminal justice system.

11. In view of the above, the impugned order [*Kunal Kumar Tiwari v. State of Bihar*, 2017 SCC OnLine Pat 2077] ‘ [*Kunal Kumar Tiwari v. State of Bihar*, 2017 SCC OnLine Pat 2076] passed by the High Court is set aside and the interim protection granted to the petitioner by this Court [*Kunal Kumar Tiwari v. State of Bihar*, (2018) 16 SCC 74, 78 (footnote 3)] ... is made absolute.”

16. In *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] , this Court observed that: (SCC p. 25, para 6)

“6. ... 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 and in a humane manner and compassionately. 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.”

17. In *Sumit Mehta v. State (NCT of Delhi)* [*Sumit Mehta v. State (NCT of Delhi)*, (2013) 15 SCC 570 : (2014) 6 SCC (Cri) 560] , in the context of conditions under Section 438(2) CrPC, this Court observed that a balance has to be struck between the rights of the accused and the enforcement of the criminal justice system while imposing conditions on the grant of bail: (SCC pp. 575-76, para 11)

“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 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.”

16. Thus, once a person is granted bail, the court ought not to impose any such condition which does not have any nexus with the purpose for which bail has been granted or for the good administration of justice and for facilitating smooth investigation and fair trial.

17. The impugned condition as noticed above, contained in the bail order passed by the Ld. Magistrate, in the opinion of this Court, does not have any nexus with the purpose of granting bail, nor with the smooth administration of justice or smooth investigation. The impugned condition relates to proper management of health/treatment in the context of the Covid pandemic which would be within the purview of the competent authorities under the Disaster Management Act, 2005 and is best left to them to deal with it. It will also have the effect of deferring release not connected with the merit of the case or the grounds or purpose for which the bail was granted.

18. Once an accused is released on bail, on fulfilling the normal conditions of securing bail, he will have a right to be freed from the custody and if he is in quarantine, he will have the right to be moved from the jail to any other location of quarantine or place of treatment subject to the norms that may be formulated by the authorities under the Disaster Management Act, 2005. It will be the responsibility of the Jail and other authorities to ensure movement of such quarantined person to an appropriate location. If such impugned condition is to be upheld, it would virtually mean that he cannot be released till he completes his quarantine period, which has no nexus with the merit of the case because of which the accused has been granted bail. Thus, the person released on bail will continue to remain in jail.

19. For the reasons discussed above, the present petition is allowed by setting aside the said condition imposed by the Ld. Judicial Magistrate, First Class, Kamrup, Amingaon, in the bail order dated 05.05.2021 Palashbari P.S. Case No.56/2021 under Section 379/411 IPC, to the effect that the bail bond shall be taken only after completion of quarantine period of the accused in jail hazot, as not contemplated under law relating to bail.

20. Learned counsel for the petitioner submits that similar such orders have been passed in other courts as well, which has the effect of delaying release of the concerned accused persons, who have been already granted bail by the concerned court.

21. In that view of the matter, let the Registry circulate a copy of this order to all the District & Sessions Judges for drawing attention of all the Magistrates of the observations made by this Court while passing bail orders.

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant