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215 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH

CRM-M-22654-2025
Reserved on: 20.08.2025
Pronounced on: 27.08.2025

Farida Praveen alias Shikha Gaur ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. N.S. Sodhi, Advocate
for the petitioner.

Mr. Atul Gaur, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
439	24.11.2023	Faridabad, District Faridabad	420, 467, 468, 471 IPC and Section 14-A of the Foreigners Act 1946

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. Per the custody certificate dated 18.08.2025, the petitioner has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“That the present case was registered on the basis of a complaint made by Santosh Sharma with the allegations that her son namely Yash @ Chotu (co-accused) was induced by the petitioner who is resident of Bangladesh. Her son brought the petitioner in the house of complainant and disclosed about the relation with the petitioner, but it was not acceptable by the complainant. The co-accused Yash (son of complainant) had given cash and gold Jewellery of the complainant to the petitioner who has misappropriated the same. The petitioner is a foreign National and residing in India without legal documents and she has prepared her Aadhar Card, Voter Card and PAN card on the basis of fake documents and changed her name to Shikha Gaur.”

4. The petitioner's counsel prays for bail and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

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5. The State's counsel opposes bail and refers to the reply.

6. It would be appropriate to refer to the following portions of the reply, which read as follows:

ROLE OF PETITIONER:-

4. That the petitioner is a foreign national and residing in India without legal documents and prepared her Aadhar card, water Card and PAN Card on the basis of fake documents and also changed her name to Shikha Gaur. The petitioner was arrested on 05.02.2025, during interrogation, the petitioner has confessed her guilt and suffered her disclosure statement Annexure R-1 and got recovered photocopy of Aadhar Card, Passport and ID Card of Bangladesh. The petitioner is named in FIR. After completion of investigation, the challan against the petitioner/accused was prepared and submitted for trial on 05.04.2025, now the present case is fixed on 26.06.2025 in the court of Ld. CJM Faridabad for consideration on charge.

7. The petitioner has been in custody for 06 months & 14 days as per the custody certificate dated 18.08.2025. Given the penal provisions invoked vis-à-vis 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 justification for further pre-trial incarceration at this stage.

8. 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. This order shall come into force from the time it is uploaded on this Court's official webpage.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above, subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate, with or without sureties, with maximum bond amount not to exceed INR 10,000/.

10. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, the surety is capable of producing the accused. However, instead of surety, the petitioner may provide a fixed deposit of INR 10,000/-, with a clause that the interest shall not be accumulated in FD, either drawn from a State-owned bank or any bank listed on the National Stock Exchange and/or Bombay Stock Exchange, in favour of the "Chief Judicial Magistrate" of the concerned Sessions Division; or a fixed deposit made in the name of the petitioner, with similar terms and with endorsement from the banker stating that the FD shall not be encumbered or redeemed without the permission of the concerned trial Court, or until the surety bond has been discharged.

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11. In *Louisderaedt v. Union of India & Others*, (1991) 3 SCC 554, decided on 24-07-1991, the Hon'ble Supreme Court holds,

[13]. The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in *Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta*, (1955) 1 SCR 1284: (AIR 1955 SC 367), that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the Executive Government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about their manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice.

12. In *Frank Vitus v. Narcotics Control Bureau*, 2025-INSC-30, the Hon'ble Supreme Court holds,

[8]. In addition to what we held by judgment and order dated 08th July, 2024, we issue the following directions:

(i) While granting bail to a foreigner within the meaning of the Act, the concerned court shall issue direction to the State or prosecuting agency, as the case may be, to immediately communicate the order granting bail to the concerned Registration Officer appointed under Rule 3 of the Rules who, in turn, shall communicate the order to all concerned authorities including the Civil Authorities. If such information is furnished, it will enable the authorities under the Act, the Rules and the Order to take appropriate steps in accordance with the law;

13. The investigation conducted so far indicates that the petitioner might not be a citizen of India, and as such might not be able to procure sureties, or amount to furnish personal bonds, or amount in lieu of surety(s). By foreseeing such a likely possibility, because the petitioner's liberty is no longer curtailed in the above captioned case, in the event of non-furnishing of the bonds, the petitioner cannot be kept in jail for an indefinite period.

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14. Without intending to dilute any statutory procedures or any of the directions of the Hon'ble Supreme Court mentioned above, it has also to be synergized that once a prisoner is released on bail, any custody of the said prisoner beyond the period necessary to complete the procedures for a formal release from prison, would be illegal, if delayed on flimsy grounds, systemic mediocrity, or bureaucratic red tape.

15. In Guddan alias Roop Narayan v. State of Rajasthan, 2023(1) RCR(Criminal) 762 : 2023 SCC Online SC 1242, Hon'ble Supreme Court holds,

[4]. The Ld. Trial Court, vide order dated 20.02.2019 convicted the appellant u/s 307,323 and 341 of the IPC on grounds of the recoveries made, the eyewitnesses to the incident and the medical evidence. The Appellant was thus sentenced to 10 years Imprisonment and fine of Rs.1,00,000/- with default sentence u/s 307 along with 1 year Imprisonment and fine of Rs. 1,000/- with default sentence u/s 323 and a 1 month Imprisonment and a fine of Rs. 500/- u/s 341 of the IPC.

[5]. The Appellant then preferred an Appeal before the High Court, and during the pendency of the Appeal preferred an Application for Suspension of Sentence.

[6]. The High Court, vide impugned order dated 20.09.2022 suspended the sentence of the Appellant, however imposed strict conditions of deposit of fine amount of Rs. 1,00,000/- along with a surety of Rs. 1,00,000/- and two bail bonds of Rs. 50,000/- each.

[7]. These conditions imposed by the High Court for the grant of suspension of sentence are being

challenged in the present Appeal.

[13]. In the present case, the Appellant has been granted bail by the High Court. However, while granting bail, the High Court has imposed the excessive conditions of a deposit of fine amount of Rs.1,00,000/- along with a surety of another Rs.1,00,000/- and two further bail bonds of Rs.50,000/- each.

[14]. We are unable to appreciate the excessive conditions of bail imposed by the High Court. The fact that bail has been granted to the Appellant herein is proof enough to show that he is not to be languishing in jail during the pendency of the case.

[15]. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.

[16]. As has been stated in the Sandeep Jain case supra [Sandeep Jain v. National Capital Territory of Delhi (2000) 2 SCC 66], the conditions of bail cannot be so onerous that their existence itself

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tantamounts to refusal of bail. In the present case, however, the excessive conditions herein have precisely become that, an antithesis to the grant of bail.

[17]. Any other accused in a similar circumstance at this point would not be in custody, however, the present Appellant, because of the conditions imposed, has not been able to leave the languish of jail. Can the Appellant, for not being able to comply with the excessive requirements, be detained in custody endlessly? To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself.

16. In Sarbananda Sonowal v. Union of India, Writ Petition (civil) 117 of 2006, decided on 05-12-2006, the Hon'ble Supreme Court olds,

[15]. ...Once, however, a reference is made to the Tribunal without making any enquiry whatsoever, it would be for the Tribunal, which has a quasi-judicial function to perform, to determine the question as to whether a prima facie case has been made out for issuance of a show-cause notice having regard to the sufficiency or otherwise of the grounds which can be found out from the material placed before it. By reason thereof, the burden of proof as specified under the 1946 Act is not diluted. The provisions of Article 21 of the Constitution of India being applicable to a person who had already set his feet in India he would be entitled to claim compliance of the principles of natural justice which may not be necessary in respect of a person who has yet to enter the Indian territory.

17. In Isaac Isanga Musumba v. State of Maharashtra, Writ Petition (Crl.) No. 80 of 2013, decided on 19-06-2013, the Hon'ble Supreme Court holds,

[6]. "Article 21 of the Constitution provides that: 21: Protection of life and personal liberty-no person shall be deprived of his life or personal liberty except according to procedure established by law."

The word 'person' in Article 21 is wide enough to cover not only citizens of this country but also foreigners who come to this country. The State has an obligation to protect the liberty of such foreigners who come to this country and ensure that their liberty is not deprived except in accordance with the procedure established by law. Notwithstanding the said guarantee under Article 21 of the Constitution, in this case, the Mumbai police acted on the FIR of the complainants, which we have found to be baseless.

18. Section 479 of BNSS provides for bail, if after filing of the police report under section 193 BNSS, during the pendency of the trial, except when punishable for death or life, has undergone detention, for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail and one third in case of the first time offenders, and the provision also applies to various other situations.

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19. It shall also be relevant to extract S. 487 of BNSS, which reads as follows:

S. 487. (1) As soon as the bond or bail bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 478 or section 480, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond or bail bond was executed.

20. In SMWP(CRIMINAL) NO. 4/2021; 2023 LiveLaw (SC) 76, decided on 31-01-2023, Hon'ble Supreme Court had issued the following directions:

One of the main reasons flagged why the accused are in jail despite the grant of bail is that he may be an accused in multiple cases and is apparently not willing to furnish bail bonds until he is given bail in all the cases as undertrial custody will be counted in all the cases.

With a view to ameliorate the problems a number of directions are sought. We have examined the directions which we reproduce hereinafter with certain modifications:

“1) The Court which grants bail to an undertrial prisoner/convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in the e-prisons software [or any other software which is being used by the Prison Department].

2) If the accused is not released within a period of 7 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.

3) NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and in case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.

4) The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmate which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.

5) In cases where the undertrial or convict requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.

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- 6) If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation.
- 7) One of the reasons which delays the release of the accused/ convict is the insistence upon local surety. It is suggested that in such cases, the courts may not impose the condition of local surety.”

We order that the aforesaid directions shall be complied with.

21. Given the fundamental right guaranteed in Article 21 of the Constitution of India; and the judicial precedents and the legal provisions mentioned above, considering the nature of allegations, sentence provided, pre-trial custody, and the petitioner being allegedly an undocumented female migrant, and is not stated to be under custody in any other FIR/Case, it is clarified that if within seven days of the availability of this order, the petitioner is unable to provide any sureties or surety amount, or bond amount, in such situation, by importing the legislative intent of proviso and explanation to S. 478(1) of BNSS, it shall be permissible for the concerned Magistrate/Court to release the petitioner on her personal bonds.
22. In Amit Rana v. State of Haryana, CRM-18469-2025 [Decided on 05.08.2025], in CRA-D-123-2020], a Division Bench of Punjab and Haryana High Court in paragraph 13, holds that “To ensure that every person in judicial custody who has been granted bail or whose sentence has been suspended gets back their liberty without any delay, it is appropriate that whenever the bail order or the orders of suspension of sentence are not immediately sent by the Registry, computer systems, or Public Prosecutor, then in such a situation, to facilitate the immediate restoration of the liberty granted by any Court, the downloaded copies of all such orders, subject to verification, must be accepted by the Court before whom the bail bonds are furnished.”
23. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
24. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

27.08.2025
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	YES