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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-616-2026

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
05.05.2026	29.05.2026	FULL PRONOUNCED	30.05.2026

Sukhdev Singh @ Rinku

...Appellant

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Vikram Satpal Anand, Advocate
for the appellant.

Ms. Pooja Nayar Sharma, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Section
07	16.09.2021	State Special Operation Cell, District SAS Nagar	124A ¹ , 153A ² , 153B ³ , 120B ⁴ IPC, Sections 17 ⁵ , 18 ⁶ , 20 ⁷ , 40 ⁸ of Unlawful Activities (Prevention) Act (Section 18-B ⁹ UAPA, 1967 added later on)

Bail Application number before the Sessions Court	BA/1012-2026
Date of Decision	08.04.2026

¹ Sedition.

² Punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms.

³ 153B. Imputations, assertions prejudicial to national integration.

⁴ Punishment of criminal conspiracy.

⁵ Punishment for raising funds for terrorist act.

⁶ Punishment for conspiracy, etc.

⁷ Punishment for being member of terrorist gang or organisation.

⁸ Offence of raising fund for a terrorist organisation.

⁹ 18B. Punishment for recruiting of any person or persons for terrorist act.



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1. Aggrieved by the dismissal of regular bail by the Special Court presided over by the Additional Sessions Judge, SAS Nagar, Punjab, the accused has come up before this Court by filing the present appeal under §28 of The Unlawful Activities (Prevention) Act, 1967, hereafter referred to as 'UAPA'.
2. The foremost question before this Court at this stage is which legal remedies are available to an accused whose bail is rejected by the Special Court. The present appeal is filed under §28 of UAPA, which deals with appeals against forfeiture of property under the UAPA, whereas in the present case, the appellant was arrested for the commission of the above-mentioned offences, and there is nothing to deal with any forfeiture, and in fact, the appeal is for Regular Bail.
3. The offences for which the appellant was arrested also included the offences under the UAPA. The Schedule of the National Investigation Agency Act, 2008, hereafter referred to as 'NIA,' empowers the Central Government under §2(1) (f) & (g) to specify offences to be investigated and tried under NIA. The offences under UAPA have been specified in such Schedule, and are being investigated and prosecuted under NIA, as can be inferred from paragraph 3 of the reply dated Apr 29, 2026, filed by the DySP, SSOC [State Special Operation Cell], District SAS Nagar, Panjab.
4. When the investigation and prosecution are in process wherein an accused is aggrieved by the denial of bail by a trial Court constituted under §11 of NIA while exercising jurisdiction under §13 NIA thereof, then the relevant provision to challenge such order before High Court is provided under §21(4) of NIA, wherein an appeal shall lie against the order of rejection of the bail by the Special Court.
5. The mere invocation of an incorrect statutory provision cannot operate to deprive the accused of their substantive right to challenge the curtailment of their personal liberty by the State agencies. Every Court possesses inherent powers to rectify the clerical or procedural error(s) to ensure that mere technicalities do not impede the cause of substantial justice. Having regard to the aforesaid, the present appeal shall be deemed to have been filed under §21(4) of NIA.
6. As per the custody certificate dated May 04, 2026, the appellant has no criminal antecedents, and his custody in the present case is 4 years, 7 months, and 14 days.
7. The Appellant's Counsel seeks bail on the merits and also on the prolonged custody and states that they have no objection to any stringent conditions. Additionally, the appellant, through his counsel, undertakes not to indulge in any anti-India activity and also



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that he would not cross the limits of his speech and expression beyond what is permitted under Article 19 of the Constitution of India.

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

9. Facts of the case emerging from the reply dated Apr 29, 2026, filed by the Deputy Superintendent of Police, SSOC, District SAS Nagar, Punjab, are as follows:

10. On Sep 16, 2021, the police received secret information that some persons, who were named by the informer, were putting up pro-Khalistan posters bearing the words "*Punjab Referendum 2020*" in the areas of Rupnagar, Mohali, Fatehgarh Sahib, Khanna, and Ludhiana. Based on this information, on the same day, the above captioned FIR was registered against Gurwinder Singh, Jagwinder Singh, Sukhdev Singh (appellant herein), Jagjeet Singh Mangat, Gurpatwant Singh Pannu, Harpreet Singh, Bikramjeet Singh, and Gursahai Singh. Later on, Rajinder Singh and Kamal Singh were also arraigned as accused.

11. The incriminating material recovered from the house of the accused Gurwinder, and later pursuant to Gurwinder's disclosure statement, included around 557 reams of printed paper (each containing around 500 pages) around 2,78,500 pages, with words "*Referendum 2020*", "*Kisan Manifesto for Freedom of Punjab Farmers*", three wooden frames to print flags one of which had "*Khalistan Punjab referendum 2020*," and other frame had "*Farmers solution Khalistan*", spray paints and printed flags "*Farmers Solution Khalistan*", a flag with "*Punjab Referendum 2020 Khalistan*," one blue colored flag with "*Punjab referendum 2020*", 100 posters with "*Freedom is the solution Punjab referendum 2020 Khalistan*," and also phone numbers starting with an international code +1, wooden frames to print flags, one heavy-duty big printing machine in running condition, printing cartridges, printers, laptops and other material and printing equipment.

12. The substance of the prosecution's case is that the printed material was intended to be circulated with the prime underlying objective to disintegrate India and to propagate the campaign for the "*Referendum 2020*", by spreading false narratives and selective voting. The investigation found the appellant was a module and an active participant in these activities; accordingly, he was also arrested along with the other accused.

13. The evidence against the present appellant primarily pertains to the alleged hatching of a criminal conspiracy with co-accused Gurwinder, as has emerged from his disclosure statement. The evidence includes digital records indicating the appellant's direct contact with the co-accused through mobile phone communications, corroborated by tower location



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data, and the movement of vehicles allegedly used by the accused persons to propagate the hate campaign, distribute pamphlets, and affix them at prominent places.

14. At this stage, reference may be made to paragraph 12 of the response affidavit, wherein the evidence collected against the appellant in investigations has been succinctly set out, and it reads as follows:

“12. That the recovered mobile phones and laptop were sent for examination to the Police State Cyber Crime Punjab, Phase 4, Punjab, Mohali, wherein nothing was retrieved from the mobile phone of Sukhdev Singh (appellant) whereas few e-mails were retrieved from the mobile phone of Jagwinder Singh and registration forms for referendum 2020, videos of paintings, graffities sprayed on walls and government infrastructures, distribution of voting forms, hosting flags of referendum 2020, screenshots of data of voters for registering votes for referendum 2020, installation of printing press machine, printing of voting forms and pamphlets from the machine etc. were retrieved from the mobile phone of Gurwinder Singh, which directly establishes the link of Appellant and his co-accused in the commission of the offences of the present case/FIR. The details of the Sharechat ID used by the accused Gurwinder Singh was sought from the Sharechat company.”

15. The case of the police is that since the other accused, namely Gurpatwant Singh Pannu, Harpreet Singh, Bikramjeet Singh, Gursahai Singh, Rajinder Kumar, and Kamal Singh, could not be arrested, as such, they were kept in column number 2, and the report under Section 173 CrPC was filed against the other accused. It is further stated that during the investigation Jagjeet Singh was found innocent and thus absolved; however, placed in column #2.

ANALYSIS:

16. The form of the words used in proviso to Section 43D (5)– ‘shall not be released’ in contrast with the form of the words as found in Section 437(1) CrPC - ‘may be released’ – suggests the intention of the Legislature to make bail, the exception and jail, the rule.¹⁰ Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India.¹¹ Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part -In the given facts of a particular case, a constitutional court may decline to grant bail—It would run counter

¹⁰ Supreme Court of India, *Gurwinder Singh v. State of Punjab & another*, [2024] 2 SCR 134; 2024-INSC-92, Para 18, February 07, 2024.

¹¹ Supreme Court of India, *Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya v. National Investigation Agency*, [2021] 9 S.C.R. 607; 2021-INSC-813, Para 13, Dec 01, 2021.



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to the very grain of our constitutional jurisprudence.¹² Long incarceration and unlikely likelihood of trial being completed in near future has also been taken as a ground for exercising its constitutional role by the Constitutional Courts to grant bail on violation of Article 21 of the Constitution of India which guarantees trial to be concluded within a reasonable time.¹³ A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed—In that event, such statutory restrictions would not come in the way.¹⁴

17. In *UOI v. KA Najeeb*, [2021] 1 S.C.R. 443; 2021-INSC-50, Feb 01, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

[18]. It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA *per-se* does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

[19]. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected.

¹² Supreme Court of India, *Sheikh Javed Iqbal v. State of U.P.*, [2024] 7 S.C.R. 1054, Para 32; 2024 INSC 534, Para 32, July 18, 2024.

¹³ Supreme Court of India, *Athar Parwez v. UOI*, [2024] 12 S.C.R. 1093; 2024-INSC-995, Para 19, Dec 17, 2024.

¹⁴ Supreme Court of India, *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh*, [2024] 7 S.C.R. 1054; 2024-INSC-534, Para 32 Jul 18, 2024.



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18. An analysis of the evidence against the appellant and in the background of the statutory provisions and the relevant judicial precedents would lead to the following outcome:

REASONING:

19. The statement of the investigator, PW2 SI Harminder Singh, attached as annexure A-2, indicates that the raid was in fact conducted at the house of appellant Sukhdev. In the cross-examination, PW2 clearly states that the police party did not recover any postal or other incriminating material from the house of Sukhdev Singh and Jagvinder Singh, except for the phones. A reference to para 12 of the reply indicates that the phones were sent for the retrieval of incriminating material, but nothing was recovered from Sukhdev Singh's mobile phone.

20. The evidence against the appellant, Sukhdev, is not direct but is based on the confessions made by the co-accused, Gurwinder, and the information gathered by the investigators during their investigation; however, all this is subject to admissibility under §25 of the Indian Evidence Act, 1872 or its new avatar §23(1) of BSA, 2023, for nothing was recovered from the appellant as per the reply filed by the state.

21. Given the quality and legal admissibility of the evidence discussed above, there are reasons to believe that the accused has overcome the hurdles of the embargo under §43D(5) of UAPA.

22. "Bail or jail?"- at the pre-trial or post-conviction stage-belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion.¹⁵ The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal.¹⁶ Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.¹⁷

¹⁵ Supreme Court of India, *Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh*, [1978] 2 S.C.R. 371; 1977-INSC-232, Dec 06, 1977.

¹⁶ Supreme Court of India in *Vaman Narain Ghiya v. State of Rajasthan*, [2008] 17 SCR 369; 2008-INSC-1420, Para 16, decided on Dec 12, 2008.

¹⁷ Supreme Court of India in *Siddharam Satlingappa Mhetre v. State of Maharashtra*, [2010] 15 SCR 201; 2010-INSC-843, Paragraph 127, decided on Dec 02, 2010.



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23. Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Art. 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community.¹⁸ The act of arrest directly affects freedom of movement of the person arrested by the police, and speaking generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial—Personal recognisance, suretyship bonds and such other modalities are the means by which an assurance is secured from the accused that though he has been released on bail, he will present himself at the trial of offence or offences of which he is charged and for which he was arrested.¹⁹

24. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court—We do not intend to be exhaustive but only illustrative—It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail—So also the heinousness of the crime.²⁰ The court while dealing with the prayer for grant of bail has to consider gravity of offence, which has to be ascertained in the facts and circumstances of each case.²¹ In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial.²²

25. In *Satender Kumar Antil v. Central Bureau of Investigation & Anr.* [2022] 6 SCR 382, pg442; 2022 INSC 757, Jul 11, 2022, the Hon'ble Supreme Court holds,

[pg442 of judgement, pg92] [67]. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by

¹⁸ Supreme Court of India, *Babu Singh & Ors. v. The State of U.P.*, [1978] 2 S.C.R. 777; 1978-INSC-18, pg 781 A-B, Jan 31, 1978.

¹⁹ Supreme Court of India, *Gurbaksh Singh Sibbia etc. v State of Punjab* [1980] 3 S.C.R. 383; 1980-INSC-68, pg397 F-G, Apr 09, 1980.

²⁰ Supreme Court of India, *State of Rajasthan v Balchand*, [1977] 1 S.C.R. 535, [pg536 A,B]; 1977-INSC-180, Sep 09, 1977, while granting bail to an accused who had surrendered after the grant of leave to the State to file an appeal against acquittal by the High Court.

²¹ Supreme Court of India, *Arvind Dham v. Directorate of Enforcement*, [2026] 1 S.C.R. 119, Para 15; 2026-INSC-12, Jan 06, 2026.

²² Supreme Court of India, *State of Kerala v Raneef*, [2011] 1 S.C.R. 590, [H, A-B Pg598-599], Para 4; 2011-INSC-5, Jan 3, 2011.



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way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

26. Thus, considering the entirety of facts and the period of custody which is prima facie excessive for the purpose of pre-trial incarceration, and the undertaking furnished on behalf of the appellant through his learned counsel, this Court is of the considered opinion that the accused deserves to be enlarged on bail. In the present case, as for the custody certificate placed on record, the appellant has been in custody in the present FIR for around four years and eight months and is stated to have no criminal antecedents. In such circumstances, continued incarceration of the appellant during the pendency of the present trial would occasion grave injustice. Accordingly, the appellant is directed to be released on bail, subject to compliance with the terms and conditions set out hereinafter.

BAIL BOND:

27. In *Guddan alias Roop Narayan v. State of Rajasthan*, 2023 SCC Online SC 1242, Jan 03, 2023, the Hon'ble Supreme Court holds,

[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*²³ case (supra), the conditions of bail cannot be so onerous that their existence itself 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

²³ *Sandeep Jain v. National Capital Territory of Delhi*, (2000) 2 SCC 66.



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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.

28. It must be recognized by county officials, and especially by magistrates, that bail is not meant as a punishment—It is meant to secure the appearance of the accused.²⁴ The bail bond and surety bond amount must synchronize with the gravity of offence and recidivism of the accused. However, once we grant bail to the accused, who is undergoing a prolonged pre-trial incarceration, we have to ensure that he does not continue to remain in custody unnecessarily for want of surety, but simultaneously, we also want to clear that if the applicant jumps bail or does not attend the trial, then he has to be dealt with sternly.

29. Since the offence involved is serious and is under UAPA, as such the personal bail bond and the surety bail bond amount must be on the higher side. Given the above, the appellant shall be released on furnishing a bond [Personal Bond] to the sum of Rs. 25,000/- and a bail bond²⁵ of one surety [Surety Bond] for Rs. 25,000/- to the satisfaction of the trial Court and due to unavailability of the trial Judge, before the nearest Chief Judicial Magistrate/ Additional CJM/ Duty Magistrate/ Illaqa Magistrate, to the following terms and conditions, subject to Chapter XXXV of BNSS, 2023.

30. In *Hussainara Khatoon v. Home Secretary, State of Bihar*, [1979] 3 SCR 169; 1979-INSC-34, Feb 12, 1979, a three-member bench of the Hon'ble Supreme Court holds,

[pg178][E-F]. If the court is satisfied on a consideration of the relevant factors that the accused has his ties in the community and there is no substantial risk of non-appearance, the accused may, as far as possible, be released on his personal bond. Of course, if facts are brought to the notice of the court which go to show that having regard to the condition and background of the accused his previous record and the nature and circumstances of the offence, there may be a substantial risk of his non-appearance at the trial, as for example, where the accused is a notorious bad character or a confirmed criminal or the offence is serious (these examples are only by way of illustration), the court may not release the accused on his personal bond and may insist on bail with sureties.

31. It shall be relevant to refer to §§ 485 & 490 BNSS, 2023 [§441 & 445 CrPC, 1973], which reads as follows:

§485. (1) Before any person is released on bond or bail bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bond or bail bond, by one or more sufficient sureties

²⁴ Robert S. Davis & Lee I. Correa, *Bail Bond Handbook*, Texas Association of Counties, 2023. [<https://countyorgprodblob2023.blob.core.usgovcloudapi.net/cms/tac/media/default/member-services/legal/legal-publications/bail-bond-handbook.pdf>].

²⁵ §484. (1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive [BNSS, 2023].



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conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond or bail bond shall also contain that condition.

(3) If the case so requires, the bond or bail bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an enquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

§490. When any person is required by any Court or officer to execute a bond or bail bond, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

32. The phrase words, “when he is released on bond or bail bond, by one or more sufficient sureties” is crucial, which clearly indicate the change in the stance under the new code, i.e., BNSS, wherein the use of the phrase, “when he is released on bond” and the subsequent use of the phrase, “or bail bond, by one or more sufficient sureties” clearly explains that the phrase “released on bond” refers to a personal bond.

33. Bail is a promise by the accused to the arresting officer or to the Court to attend the trial and comply with the conditions stipulated in the order. The accused accepts such a contract by furnishing bail bonds, and so do their sureties, undertaking to produce the accused before the concerned Court if they default to appear. Section 74 of the Indian Contract Act, 1972, provides compensation for breach of contract where a penalty is stipulated. The perfect insight is its illustration (c), which reads, “*A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.*”

34. A bond is a contract between the accused and the State under which the accused has agreed to appear before the Court on the hearing dates and his sureties have assured the Court that they will ensure that the accused does not commit breach of the bond.²⁶

²⁶ Madras High Court, *Pillappan @ Ravikumar v. State*, Crl.R.C. (MD) No. 148 of 2018, Apr 18, 2018, Para 15.



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35. Section 513 [CrPC, 1894] provides for a concession to an accused person who is unable to produce sureties—That section also makes it clear that the Magistrate is not found to accept cash, but may permit an accused person to deposit a sum of money in lieu of executing a personal bond and giving surety of some persons—The section, however, does not authorise a demand of cash by a Magistrate.²⁷

36. The object of requiring an accused to give security for his appearance in Court is not to secure the payment of money to the State, for that is a secondary consideration, but to secure the presence of a person facing trial.²⁸ From the relevant provisions of the Cr.P.C. there is no doubt that cash deposit in lieu of execution of a bond by the accused is an alternative system of granting bail and can be stated to be no less efficacious than granting bail of certain amount with or without surety or sureties of the like amount.²⁹ Surely, we cannot and must not lose sight of the word "may" which indicates that accepting the deposit of money in lieu of surety is left to the discretion of the Court and that consequently the acceptance of deposit of money is not obligatory and the relief is to be granted only where the Court thinks fit to substitute a cash security.³⁰

37. There is a lack of comprehensive data demonstrating the role of sureties in bringing the accused to justice. Mere recovery of the surety amount by penalty is not equivalent to producing the accused to face trial. It is also true that the purpose of a cash bond is not to enrich the State's coffers, but to secure the accused's presence. The menace of securing sureties by payment is well known within the legal fraternity. Some unscrupulous elements have established a flourishing business by serving as sureties and exploiting vulnerabilities in the system. There is no reliable data establishing the role of sureties in bringing fugitives to justice, and the ground reality is that sureties are more concerned with recovering their financial losses incurred in actions under §491 BNSS, 2023 [§446 CrPC, 1973]. It is beyond cavil that the sole purpose of a surety bond is to ensure that whenever an accused evades attending the trial, their surety produces them before the Court.

38. There has been a paradigm shift in the social setting. People are constantly on the move, and territorial boundaries no longer restrict their pursuit of opportunities. Further, stronger individual identities have emerged and even been codified through Government initiatives. The social background against which the requirement of sureties was introduced is starkly at odds with the present milieu. The biometric identification mechanism

²⁷ Allahabad High Court, *Rex v. R.R. Chari*, (1948) SCC OnLine All 1, Jan 26, 1948, pg304.

²⁸ Delhi High Court, *Charles Shobhraj v. State*, (1996) SCC OnLine Del 300, Apr 19, 1996, Para 6.

²⁹ Gauhati High Court, *Gokul Das v. The State of Assam*, (1980) SCC OnLine Gau 20, July 31, 1980, Para 13.

³⁰ Delhi High Court, *Charles Shobhraj v. State*, (1996) SCC OnLine Del 300, Apr 19, 1996, Para 7.



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(AADHAR) employed for targeted delivery of welfare benefits and to prevent duplication has provided a universal identity to each resident of India, including visitors. It is only fitting that the dependence of the accused on surety is minimized by giving alternative options, and the Courts must consider accepting the alternatives to sureties, subject to the accused attending the trial and appearing to undergo the sentence, if awarded.

39. The very purpose of Section 445 Cr.P.C providing for deposit instead of recognizance] is to ensure that a person is not denied the opportunity to be enlarged on bail merely for the reason of his inability to execute bond, with or without sureties—Section 445 Cr.P.C provides for deposit of a sum of money or Government Promissory Note of such amount as the Court may fix in lieu of executing the bond.³¹ The cash deposit is equally efficacious as other system in view of Section 445 Cr.P.C.³² The discretionary power exercised by the Magistrate or the Court, as the case may be, under sections 441 Cr.P.C., 1973 and 445 Cr.P.C., is mutually exclusive and not concurrent—On the Court requiring a person to execute a personal bond with sureties or without sureties, it is at the option of the accused to furnish cash deposit in lieu of executing such bond that the Court may make an order under section 445 of Cr.P.C.³³ Further, the legislative policy in the matter relating to cash security as appears from the provision in Section 445, CrPC is that it will be open to the person who has been directed to be released on bail on furnishing personal bond (excepting personal bond for good behaviour) to furnish cash security in lieu of personal bond or recognizance with permission of the Court.³⁴

40. Some times an accused, who is an utter stranger to the area or he has no friends or relatives in the area or he could not secure a person to stand as surety can offer cash surety—The Court can accept cash surety, instead of personal surety. But the Court cannot demand personal surety, property surety and cash surety, at a time— It is not cumulative. It is alternative.³⁵ It is also clear that on the Court requiring a person to execute a personal bond with sureties or without sureties, it is at the option of the accused persons to furnish cash deposit in lieu of the bond or sureties that the Court may make an order under Section 445.³⁶

³¹ Kerala High Court, *Ubaidulla v. State of Kerala*, CrI.MC 3414-2020; 2020-KER-27721, Aug 05, 2020, observed, Para 5.

³² Allahabad High Court, *Maha Ahmad Yusuf v. State of U.P.*, Application under 482 No. 5398 of 2015, Feb 24, 2015, Para 6.

³³ Orissa High Court, *Endua @ Manoj Moharana v. State*, CRLMA No. 184 of 2018, [pg4-5], Aug 21, 2018.

³⁴ Orissa High Court, *Parades Patra v. State of Orissa*, (1993) (II) OLR 452, May 19, 1993, Para 10.

³⁵ Madras High Court, *Sagayam @ Devasagayam v. State*, CrI. M.P. No.3888 of 2017, Para 41, Apr 24, 2017.

³⁶ Karnataka High Court, *Krishna Kumar & Ors. v. The State of Karnataka*, (1979) SCC OnLine Kar 118, Para 3, Apr 24, 1979.



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41. Given the above, before accepting the bonds of surety, the concerned Court must be satisfied that, if the accused fails to appear, the surety is capable of producing the accused. Additionally, instead of a surety, the appellant/accused may deposit an equivalent sum of money,³⁷ or fixed deposit of INR 25,000/-, with automatic renewal facility and with a clause that the interest shall not be accumulated in the FD, or a blocking of funds equal to the amount of the surety bond; drawn/made either from a State-owned bank or any bank listed on the National Stock Exchange and/or Bombay Stock Exchange, in favor 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 an 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 personal bond has been discharged or it has been substituted by a surety bail bond.

42. Although surety bail bonds must be furnished in terms of §§485(4), 486, 491, and 492 of BNSS, 2023, the ground reality is that when the sureties appear before the courts, the investigators, or the attesting officers, these officers insist on verification of such sureties from the *Lambardar*, ward members, etc. It is common knowledge that many people who verify the authenticity of the sureties take money to cover travel expenses, loss of a day’s earnings, or charges for providing service, which is not only illegal and impermissible but also degrades social values. This loophole needs to be plugged in to shut down the illicit business of levying the above-mentioned service charges, thereby effectively preventing the practice of furnishing fake and professional sureties before courts.

43. The exponential growth in technology has already made it feasible for the identification of sureties through the AADHAR card and further verification of the genuineness of the AADHAR number through the Aadhaar App^{38,39} which as of date is authentic and secure, there shall be no need or justification for verification of sureties through *Lambardar*, *Nambardar*, *Sarpanch*, *Pradhan*, *Panch*, *Kshetra Panchayat Sadasya*, *Gram Sewak*, BDC Members, MC ward members, etc. It shall be sufficient for the Officer/Court attesting the bonds to declare the verification and authentication of the surety’s identity through AADHAR, either themselves or through staff, or even by

³⁷ §490. When any person is required by any Court or officer to execute a bond or bail bond, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix *in lieu* of executing such bond [BNSS, 2023].

³⁸ <https://play.google.com/store/apps/details?id=in.gov.uidai.pehchaan&hl=en-US>.

³⁹ <https://apps.apple.com/in/app/aadhaar/id6744029871>.



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delegation. They shall not insist upon identification of sureties *through Lambardars and other* above-mentioned officers, etc., and such identification through them shall be done only when AADHAR identification is not possible.

44. Without intending to dilute any statutory procedures or binding judicial precedents, it has also to be emphasized 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 occasioned merely by delay on flimsy grounds, systemic inefficiency and mediocrity, or bureaucratic red tape. In such a situation, it shall be permissible for the trial Court by passing a reasoned order to reduce the surety bond amount or after waiting for a couple of weeks, waive it altogether.

45. In *Navaneetha Krishnan v. State*, Crl.O.P.No.4707 to 4715 of 2015, Apr 06, 2015, Madras High Court observed,

[17]. While granting bail, the Court can direct the accused to execute bail bond. As per Section 440 Cr.P.C., the bond amount should not be excessive. When a person so directed to execute the bond either with surety or without surety is not able to furnish the sureties, then under Section 445 Cr.P.C., he has the option to offer cash security. But even then, it must be a reasonable amount. It should not be an arbitrary, excessive amount. It should not be in the nature of deprivation of grant of bail by fixing an heavy amount as surety amount. If heavy amount is directed to be deposited as cash security, the bailee/accused will not be in a position to comply it. If heavy amount is demanded from the surety, then the bailor will not be forthcoming. And 'haves' will go out, while 'have nots' will remain in jail.

[18]. Reading sections 440, 441 and 445 Cr.P.C. together, it is clear that straightaway a Court cannot direct the accused to deposit cash security. First of all, the Court has to direct execution of bail bond by the sureties in case if the release is not on his own bond. Only in lieu of that deposit of cash security could be directed (see Section 445 Cr.P.C.). Thus, the Court cannot straightaway direct the accused to deposit cash security.

46. Section 490 BNSS [Analogous to §445 CrPC, 1973] is for the aid of the person who is unable to find a surety. Social Justice is the signature tune of our Constitution and the little man in peril of losing his liberty is the consumer of Social Justice.⁴⁰ When the accused were foreign national and were unable to furnish local sureties, then the Courts permitted them to furnish cash surety.^{41,42}

⁴⁰ Supreme Court of India, *Moti Ram & Ors. v. State of M.P.*, [1979] 1 S.C.R. 335, at pg339(A); 1978-INSC-143, pg339, Aug 24, 1978.

⁴¹ Uttarakhand High Court, *David Morrison v. State of Uttarakhand*, Crl.Misc.App No. 902 of 2020, Para 8, Jan 13, 2021, “The applicant accused is a foreigner and he is not able to furnish sureties. The same does not debar him from being admitted to bail.”



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47. To give effect to the provisions of §488⁴³ BNSS, 2023, it is clarified that if the accused jumps bail⁴⁴, which leads to the cancellation of the bail bonds, then, on the next occasion, subject to the bail conditions, if any, ordered by a higher Court, the accused shall have to furnish a bail bond for INR 1,00,000/- and at least one surety for INR 1,00,000 in the same manner as mentioned above. It is further clarified that if the accused jumps bail for the second time, then, subject to the bail conditions, if any, ordered by a higher Court, he shall not be entitled to bail unless the trial Court grants it by a reasoned order.

BAIL CONDITIONS:

48. 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.⁴⁵ It is a recognition that liberty is conditional, not absolute, and subject always to the larger interest of ensuring a fair trial.⁴⁶ 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.⁴⁷

49. Therefore, the bail is subject to the compliance of the following conditions:

50. He shall not tamper with the evidence and shall not threaten the witnesses.⁴⁸

51. The appellant shall regularly attend the Trial Court and cooperate with the expeditious disposal of the trial.⁴⁹

⁴² Delhi High Court, *Shokhista v. State*, (2005) SCC OnLine Del 1596, Sep 05, 2005, Para 5., “The accused is a foreign national and is not able to furnish a local surety. The same does not debar her from being admitted to bail.”

⁴³ §488. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

⁴⁴ §269. Whoever, having been charged with an offence and released on bail bond or on bond, fails without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both [BNS, 2023].

Explanation.—The punishment under this section is—

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the Court to order forfeiture of the bond.

⁴⁵ Supreme Court of India, *Guddan Singh alias Roop Narian v. State of Rajasthan*, (2023) 2023 SCC OnLine SC 1242, Para 14, Jan 3, 2023.

⁴⁶ Supreme Court of India, *Phireram v. State of Uttar Pradesh & Anr.*, [2025] 10 S.C.R. 1, Para 57, ; 2025-INSC-1074, Sep 02, 2025.

⁴⁷ Supreme Court of India, *Mohammed Zubair v. State of NCT of Delhi*, [2022] 18 SCR 494; 2022-INSC-736 Para 29, July 20, 2022.

⁴⁸ Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, MANU-SC-0716-2024-JUD20240821093308, Para 34(e), 2024-INSC-534, Jul 18, 2024.



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52. Given the overall sensitivity of the allegations and to safeguard that the appellant/accused attends the trial and does not repeat anti-India activities, the bail shall be subject to the stringent conditions enumerated in this bail order.

53. The accused shall mention the permanent and present residential address along with the present mobile number, and if there is no mobile number, then the mobile number of the person who shall convey the information sent by any Court, the Prosecution, Police, etc. In case of a change of address or phone number, the SHO of the Police Station, where FIR was investigated, shall be informed through a Registered Letter, and the said change shall also be informed to the Court where bail bonds were furnished. The said change in information must also be updated on this Courts' web portal, as and when such a facility becomes available.

54. Having regard to the background and gravity of allegations against the accused, the protection of witnesses and preservation of societal interests, as well as the integrity of the country, assume paramount importance. Thus, it would be appropriate to restrict the possession of firearms. Given the nature of the allegations and the other circumstances peculiar to this case, the accused shall surrender all weapons, firearms, and ammunition, if any, along with the arms license, to the concerned authority within fifteen days of release from prison and inform the Investigator of compliance. [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond a reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. However, subject to the Indian Arms Act, 1959, the Applicant shall be entitled to renew and reclaim it in the event of acquittal in this instance, provided it is otherwise permissible under the relevant rules. Restricting firearms would instill confidence in society; it would also prevent the accused from influencing witnesses and from repeating the offense.

55. The furnishing of the personal bonds shall be deemed acceptance of all stipulations, terms, and conditions of this bail order; if violated, the State might consider filing an application for cancellation of the order of bail, and such application shall be filed before the trial Court, which shall be competent to cancel this bail. Subject to cancellation, the personal bail bond of the accused shall remain in force throughout the trial and thereafter in terms of §481 BNSS, 2023 [§437-A CrPC, 1973].

56. The appellants shall not make, publish, or disseminate any information, statement, article, or post, whether in print, electronic, or social media, concerning the present case or

⁴⁹ K. Kavitha v. Directorate of Enforcement, 2024 INSC 632, Para 29(v), Aug 27, 2024.



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its participants till conclusion of the trial. The appellants shall not circulate any post either in electronic form or physical form or circulate any hand bills, posters, banners, etc. in any form whatsoever.⁵⁰

57. The conditions mentioned above imposed by this court are to endeavor to reform and ensure that the accused does not repeat the offense. It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences.⁵¹

58. The foundational bail condition is that if the accused repeats^{52,53} the offense or commits any non-bailable offense which provides for a sentence of imprisonment for more than seven years, or commits any offence under the NDPS Act, where the quantity involved is more than half of the intermediate, or commercial, or violates §§19, or 24, or 27-A of the NDPS Act, then the volition itself would be a sufficient ground for the cancelation of bail order and the prosecution shall file an application for cancelation of this bail before the trial code which shall be competent to do so.

59. The appellant shall abide by all statutory bond conditions and appear before the Court(s) concerned on all dates and shall not seek any unnecessary adjournment. It is also made clear that if it is found at any stage that the appellant is misusing the liberty of bail, it shall be open to the prosecution to seek cancellation of bail.⁵⁴ In case of breach of any of the afore-stated conditions imposed or in the event of appellants having misused the liberty granted, it shall be open to the trial Court to cancel the bail which would be necessarily after affording opportunity of hearing to the appellants.⁵⁵

60. In case the petitioner finds the 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 preferably before the Trial Court, and

⁵⁰ Supreme Court of India, *Gulfisha Fatima v. State (Govt. of NCT of Delhi)*, [2026] 1 SCR 609; 2026-INSC-2, Para 434(vii) & (ix), Jan 05, 2026

⁵¹ Supreme Court of India, *Md. Tajiur Rahaman v. The State of West Bengal*, SLP (Crl.) No.-12225 of 2024, Nov 08, 2024.

⁵² Supreme Court of India, *Hasanujjaman & ors. v. The State of West Bengal*, SLP (Crl.) 3221-2023, May 04, 2023, “[6]. Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.”

⁵³ Supreme Court of India, *Md. Tajiur Rahaman v. The State of West Bengal*, , SLP (Crl) 12225-2024, 08-Nov-2024, [Para 7], “It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences.”

⁵⁴ Pawandeepsingh Mahendrasingh Kohli v. State of Maharashtra, CrA 513-2021, May 18, 2021.

⁵⁵ Supreme Court of India, *Gulfisha Fatima v. State (Govt. of NCT of Delhi)*, [2026] 1 SCR 609; 2026-INSC-2, Para 435, Jan 05, 2026.



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alternatively before this Court, and the Trial Court shall also be competent to modify or delete any condition(s).

61. Any observation made hereinabove is tentative and is not an expression of opinion on the case's merits, and it shall have no bearing on the trial or on the case of the co-accused, and the trial Court shall not advert to these comments.⁵⁶

62. It is clarified that this bail order shall not be considered as a blanket bail order in any other matter and is only limited to granting bail in the FIR mentioned above.

63. In *Amit Rana v. State of Haryana*, CRM-18469-2025 [in CRA-D-123-2020, decided on 05.08.2025], a Division Bench of the Punjab and Haryana High Court held,

[13]. 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.

64. We reiterate the directions made in *Amit Rana supra* and these must be followed in all bail matters. It is high time that the trial Courts and the Judicial Magistrates are consistent while taking bail bonds and proportionate while imposing bail conditions.

65. Given the above, the impugned order is set aside, and the appeal is allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

(SUKHVINDER KAUR)
JUDGE

May 29, 2026
Anju Rani

Whether speaking/reasoned	YES
Whether reportable	YES

⁵⁶ * We place on record the valuable assistance of Ms. Somya Sharma [Law Researcher] and Ms. Shivani Pant [Intern-NALSAR].