

Girish Gandhi vs The State Of Uttar Pradesh on 22 August, 2024

Bench: B.R. Gavai, Prashant Kumar Mishra

2024 INSC 617

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
WRIT PETITION (CRIMINAL) NO. 149 OF 2024

GIRISH GANDHI

PETITIONER (s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

RESPONDENT(s)

JUDGMENT

K.V. Viswanathan, J.

1. The present Writ Petition, under Article 32 of the Constitution of India, has been filed by the petitioner-Girish Gandhi seeking an appropriate Writ or Direction to the effect that the personal bonds and sureties executed by the petitioner in connection with FIR No. 0030 of 2021 dated 21.01.2021 registered at P.S. Sadar, District Gurugram, shall hold good for eleven other bail orders passed in his favour from the Courts of different States. Details of the bail orders in different FIRs have been elaborated hereinbelow.

2. The question that arises for consideration is, is the petitioner entitled to the relief of treating the personal bond and one set of sureties already furnished as holding good for the other bail orders also?

Brief Facts:-

3. Very broadly, the prosecution case is that the company in which the petitioner was concerned with, namely, White Blue Retail Pvt. Ltd. (hereinafter referred to as 'the Company') allowed the use of its trade name through franchisee agreement for opening of Grocery Shops. The Company also took the franchisee amounts and refundable security. The substratum of the allegation is that the Company which was to give space to open store on rent in some cases; 5% commission on monthly sale in some; 10% margin on goods sales in some others; 12% interest as dividend on investment in a few and minimum 24% profit in certain agreements, failed in its promise.

4. Totally, 13 FIRs came to be registered against the petitioner under various Sections viz., 406, 420 and 506 of IPC. The petitioner has been granted the benefit of bail with the conditions in all of them.

A chart setting out the FIR nos. and the place where the FIR is registered and the bail conditions are set out hereinbelow:

List of Bail Orders S. FIR No. Place of FIR Bail Conditions No.

1. 190/2020 P.S. Savina, Udaipur, Personal Bond of Rs.

		Rajasthan	50,000/- and two sureties of Rs. 25,000/- including one local surety.
2.	1028/2020	P.S. Civil Lines, Personal Bond and Moradabad, Uttar Pradesh	furnishing of two sureties each in the like amount to the satisfaction of Court (amount not mentioned).
3.	685/2020	P.S. Vrindavan, Personal Bond and Mathura, Uttar Pradesh	furnishing of two sureties each in the like amount to the satisfaction of Court (amount not mentioned).
4.	190/2020	P.S. Kotgate, Bikaner, Personal Bond of Rs. Rajasthan	1,00,000/- and two sureties of Rs. 50,000/- each.
5.	309/2020	P.S. Siddhartha Personal Bond of Rs. Nagar, Siddhartha Nagar, Uttar Pradesh	75,000/- and two sureties of Rs. 75,000/- each.
6.	146/2020	P.S. Jwalapur, Personal Bond and Haridwar, Uttarakhand	furnishing of two sureties each in the like amount to the satisfaction of Court (amount not mentioned).

g.	53/2020	P.S. Pinarayi, Personal Bond of Rs. Pinarayi, Kerala	10,000/- and two solvent sureties of Rs. 10,000/- each.
8.	343/2020	P.S. Kotwali, Personal Bond and Mathura, Uttar Pradesh	furnishing of two sureties each in the like amount to the satisfaction of Court (amount not mentioned).
9.	294/2020	P.S. Sipri Bazar, Personal Bond and	

Jhansi, Uttar Pradesh furnishing of two sureties each in the like amount to the satisfaction of Court (amount not mentioned).

10. 30/2021 P.S. Sadar, Personal Bail Bonds with Gurugram, Haryana sum of Rs.50,000/- and one surety of Rs.50,000/-.

11. 521/2020 P.S. Sadar, Fixed Deposit Receipts in the Gurugram, Haryana sum of Rs. 1,00,000/-.

12. 297/2020 P.S. Kotwali, Patiala, Personal Bond and Punjab furnishing of two sureties each in the like amount to the satisfaction of Trial Court.

13. 222/2020 P.S. Tulsipur, Furnishing a Personal Bond Balrampur, Uttar and two sureties each in the Pradesh like amount to the satisfaction of the Court concerned.

5. The petitioner submits that he has already furnished personal bail bonds with a sum of Rs. 50,000/- and one surety of Rs. 50,000/- in the Trial Court in respect of FIR no. 0030 of 2021 registered at P.S. Sadar, Gurugram. The petitioner also submits that he has fulfilled the conditions of bail with respect to the order passed by the Learned Additional Chief Judicial Magistrate, Thalassery, Kerala in FIR No. 53 of 2020 registered at P.S. Pinarayi, Kerala.

6. The petitioner's contention is that he was the main bread earner of the family. The Petitioner claims that he was merely working in the Company as In-charge (Accounts), though this is disputed by the prosecution. The claim of the complainants in some of the FIRs is that he was the Director of the Company. We are not to resolve that issue here. The petitioner further contends that his wife is physically handicapped and is a teacher in a private school and barely earns enough to eke out a living for herself and their son. Petitioner also avers that he has an aged mother to take care of.

7. The main plea of the petitioner is that he is not in a position to furnish separate sureties, as directed in the remaining 11 bail orders. In view of that he seeks for treating the sureties already furnished in two cases in such a manner as to enure to the benefit of all the other eleven cases.

8. When the matter came up on 08.04.2024, this Court made the following order:

“1. Mr. Prem Prakash, learned counsel for the petitioner, contends that in spite of bail orders being passed in 11 cases, the petitioner is not able to avail his liberty due to his inability to produce the sureties. Learned counsel prays for a direction that the personal bonds and the sureties that are executed in connection with FIR No.0030 of 2021, dated 21.01.2021, registered at P.S. Sadar, District Gurugram, should be held good for the other bail orders set out in the prayer clause of the petition.

2. Issue notice to the respondents.

3. Dasti, in addition, is permitted.

4. Liberty is granted to the petitioner to serve the standing counsel for the respondent-States.

5. List the matter on 15.04.2024 for further consideration.”

9. To this Writ Petition, the States of Uttar Pradesh, Haryana, Punjab, Rajasthan, Uttarakhand and Jail Superintendent Bhondsi Jail, Gurugram are arrayed as Respondent no. 1, 2, 3, 4, 5 and 6 respectively. A perusal of the chart mentioned above would reveal that while in the State of Uttar Pradesh there are six FIRs, in Haryana there are two FIRs, in Punjab there is one FIR, in Rajasthan there are two FIRs and in Uttarakhand there is one FIR. There is also one FIR in Kerala where sureties have already been furnished.

10. As far as the State of Haryana is concerned, out of the two FIRs where bail orders have been obtained, sureties have been furnished in FIR No. 30 of 2021 registered at Police Station Sadar, Gurgaon.

11. Counter affidavits have been filed by the respective States. The State of Uttar Pradesh has contended that in FIR No. 685 of 2020, the charge-sheet has been submitted on 07.07.2022 for the offences under Sections 420, 406, 506, 467, 468 and 471 of IPC before the Chief Judicial Magistrate, Mathura, UP. Insofar as FIR No. 343 of 2020 is concerned, charge-sheet has been filed on 14.07.2022 for the offences under Sections 420, 406 and 506 of IPC against the petitioner before the Learned Additional Chief Judicial Magistrate, Mathura. According to the State, for each crime number, separate surety is required and a particular surety cannot be made liable to pay the amount in excess of the amount of bond that the surety has furnished. In view of that, according to the State, bond of one surety cannot be mixed up with the bond executed or to be executed in other cases against different crime numbers. Stating so, the State opposes the prayer of the petitioner.

12. Similarly, counter affidavit has been filed by the State of Rajasthan. The State points out that apart from the two FIRs mentioned above, there is one more FIR No. 230 of 2020 registered at Police Station Sadarpur, District Jodhpur, Rajasthan. The State contends that separate sureties are required and a common surety cannot be made liable to pay the amount in excess of the amount of bond that he or she furnishes. The State has also opposed the prayer of the petitioner.

13. Equally, the State of Uttarakhand has averred that separate personal bond and sureties ought to be furnished insofar as the sole FIR pending in the State is concerned. The Superintendent, Bhondsi Jail, Gurugram has also filed a counter affidavit opposing the prayer of the petitioner.

14. The petitioner has also filed an additional affidavit placing on record certain subsequent events pointing out that two more FIRs have been registered against him viz., FIR No. 608 of 2022 registered at Police Station, Vibhuti Khand, District Lucknow, U.P. on 13.09.2022 under Sections 406 and 420 of IPC and FIR No. 141 of 2023 dated 21.05.2023 registered at Police Station Tulsipur, District Balrampur under Section 3(1) of the Uttar Pradesh Gangsters and Anti Social Activities (Prevention) Act, 1986. The petitioner has also averred that insofar as FIR No. 608 of 2022 registered at Police Station Vibhuti Khand is concerned, the petitioner had filed Writ Petition (Criminal) Diary No.20302 of 2024 in this Court. We noticed that the said proceeding is disposed of giving him liberty to approach the High Court. We say nothing more insofar as FIR No. 608 of 2022 is concerned.

15. A prayer is made that the bail granted in FIR No. 222 dated 08.09.2020 registered at P.S. Tulsipur, District Balrampur, U.P. be allowed to enure to the benefit of the petitioner in connection with FIR No. 0141 of 2023 dated 21.5.2023 registered at PS Tulsipur, District Balrampur, U.P. We outrightly reject this prayer. The petitioner is at liberty to move appropriate proceedings which may be decided in accordance with law and uninfluenced by the present order. We are in the present matter only concerned as to whether insofar as the eleven FIRs are concerned in which bail has already been granted, there could be any order for consolidation of sureties and, if so, in what manner.

Contentions:

16. We have heard Mr. Prem Prakash, learned counsel for the petitioner and the learned senior counsels and counsels appearing for the respective States. We have considered the documents on record and the arguments advanced by the parties.

Analysis and Reasoning:

17. It is undisputed that in the 13 matters set out in the chart hereinabove, the petitioner stands enlarged on bail. The bail orders have become final and have not been challenged by the prosecution.

It is also undisputed that in two of them FIR no. 0030 of 2021 registered at P.S. Sadar, Gurugram and FIR No. 53 of 2020 registered at P.S. Pinarayi surety already stands furnished. The situation today is, in spite of obtaining bail in 13 cases, the petitioner has not been able to furnish sureties. There are two cases where bail has not been granted and we have already observed that the present proceedings do not concern them.

18. Section 441 of the Code of Criminal Procedure which deals with bonds and sureties, reads as under:

“441. Bond of accused and sureties. – (1) Before any person is released on bail or released on his own 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 bail, by one or more sufficient sureties 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 shall also contain that condition.

(3) If the case so requires, the 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 inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.”

19. Section 446 of the Code of Criminal Procedure which deals with procedure when bond has been forfeited, reads as under:

“446. Procedure when bond has been forfeited. – (1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.”

20. As set out earlier, the cases against the petitioner span over six States. Insofar as the case in Kerala is concerned, he has already furnished sureties and there is only one case in that State. Insofar as Haryana is concerned, of the two cases, he has furnished sureties in one and in the other case what has been ordered is Fixed Deposit Receipt (FDR) for a sum of Rs. 1,00,000/-. We do not propose to interfere with this order. The remaining States are Uttar Pradesh, Rajasthan, Punjab and Uttarakhand. In these States, even though in the cases concerned, the bail has been ordered, the petitioner is still in custody because he is unable to furnish sureties.

21. The Oxford Dictionary defines ‘surety’ as “a person who takes responsibility for another’s obligation”. Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005 defines ‘surety’ to mean “the bail that undertakes for another man in a criminal case.”

22. Whether it is to get individuals, to stand as a guarantor for a loan transaction or as a Surety in a criminal proceeding, the choice for a person is very limited. It will very often be a close relative or a longtime friend. In a criminal proceeding, the circle may get even more narrowed as the normal tendency is to not disclose about the said criminal proceeding to relatives and friends, to protect one’s reputation. These are hard realities of life in our country and as a court of law we cannot shut our eyes to them. A solution, however, has to be found strictly within the framework of the law.

23. From time immemorial, the principle has been that the excessive bail is no bail. To grant bail and thereafter to impose excessive and onerous conditions, is to take away with the left hand, what is given with the right. As to what is excessive will depend on the facts and circumstances of each case. In the present case, the petitioner is experiencing a genuine difficulty in finding multiple sureties. Sureties are essential to ensure the presence of the accused, released on bail. At the same time, where the court is faced with the situation where the accused enlarged on bail is unable to find

sureties, as ordered, in multiple cases, there is also a need to balance the requirement of furnishing the sureties with his or her fundamental rights under Article 21 of the Constitution of India. An order which would protect the person's fundamental right under Article 21 and at the same time guarantee the presence, would be reasonable and proportionate. As to what such an order should be, will again depend on the facts and circumstances of each case.

24. In *Satender Kumar Antil vs. Central Bureau of Investigation & Anr.* (2022) 10 SCC 51, this Court held that "imposing a condition which is impossible of compliance would be defeating the very object of release."

25. This Court, in SLP (Criminal) Nos. 8914-8915 of 2018 [*Hani Nishad @ Mohammad Imran @ Vikky vs. The State of Uttar Pradesh*], has made the following order in a situation where the petitioner was faced with 31 cases:

"Considering the submissions, the impugned order is modified to the extent that the petitioner shall execute a personal bond for Rs. 30,000/- (Rupees Thirty thousand only) and the same bond shall hold good for all 31 cases. There shall be two sureties who shall execute the bond for Rs. 30,000/- which bond shall hold good for all the 31 cases. It is clarified that the personal bond so executed by the Petitioner and the bond so executed by the two sureties shall hold good for all the 31 cases.

With these observations, the Special Leave Petitions are disposed of.

Pending applications, if any, shall stand disposed of." In *Hani Nishad* (supra) only one State was involved, as all the cases were pending in the State of Uttar Pradesh.

26. We may also usefully note the order of this Court In *Re Policy Strategy for Grant of Bail in SMWP* (Criminal) No. 4/2021 reported in 2023 SCC OnLine SC 483. By the order dated 31.01.2023, this Court endorsing certain directions sought by the *Amicus Curiae* passed an order for compliance with those directions. The two relevant directions are extracted hereunder:-

"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."

27. In the bail order in FIR No. 190/2020 registered at P.S. Savina, Udaipur, Rajasthan, there is an order for providing a local surety. The petitioner herein hails from Haryana and to secure a local surety will be an arduous task for him. This condition has virtually rendered ineffective the order for bail. We need to do nothing more than to recall the memorable words of Justice Krishna Iyer in *Moti Ram and Ors. vs. State of Madhya Pradesh* (1978) 4 SCC 47 :-

“33. To add insult to injury, the magistrate has demanded sureties from his own district! (we assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff.” In view of the above, we propose to relieve the petitioner from the direction to produce a local surety.

28. Keeping the principles discussed hereinabove, we direct that for the FIRs pending in each of the States of Uttar Pradesh, Rajasthan, Punjab and Uttarakhand, in each State, the petitioner will furnish his personal bond for Rs. 50,000/- and furnish two sureties who shall execute the bond for Rs. 30,000/- each which shall hold good for all FIRs in the concerned State, for cases mentioned in the chart set out hereinabove. The same set of sureties is permitted to stand as surety in all the States. We feel that this direction will meet the ends of justice and will be proportionate and reasonable. For the State of Uttar Pradesh, the above direction shall hold good for FIR No. 1028/2020 registered at P.S. Civil Lines, Moradabad, Uttar Pradesh, FIR No. 685/2020 registered at P.S. Vrindavan, Mathura, Uttar Pradesh, FIR No. 309/2020 registered at P.S. Siddhartha Nagar, Siddhartha Nagar, Uttar Pradesh, FIR No. 343/2020 registered at P.S. Kotwali, Mathura, Uttar Pradesh, FIR No. 294/2020 registered at P.S. Sipri Bazar, Jhansi, Uttar Pradesh and FIR No. 222/2020 registered at P.S. Tulsipur, Balrampur, Uttar Pradesh. Insofar as the State of Uttar Pradesh is concerned, the personal bond for Rs. 50,000/- and two surety bonds of Rs. 30,000/- shall be executed in regard to FIR No. 685/2020 registered at P.S. Vrindavan, Mathura. This personal bond and the bond of surety will enure to the benefit of all the other FIRs in the State of Uttar Pradesh mentioned in the Chart set out in Para 4 herein above.

29. For the State of Punjab, the above direction shall hold good for the FIR No. 297/2020 registered at P.S. Kotwali, Patiala, Punjab.

30. For the State of Rajasthan, the above direction shall hold good for the FIR No. 190/2020 registered at P.S. Savina, Udaipur, Rajasthan and FIR No. 190/2020 registered at P.S. Kotgate, Bikaner, Rajasthan. The personal bond and the sureties as directed above, insofar as the State of

Rajasthan is concerned, shall be executed in regard to FIR No. 190/2020 registered at P.S. Savina, Udaipur. This personal bond and the bond of surety will enure to the benefit of the other FIR registered in the State of Rajasthan as mentioned in the Chart set out in Para 4 herein above.

31. For the State of Uttarakhand, the above direction shall hold good for the FIR No. 146/2020 registered at P.S. Jwalapur, Haridwar, Uttarakhand.

32. This condition will supersede the condition imposed in the respective bail orders. We repeat that we have not dealt with FIR No. 608 of 2022 dated 13.09.2022 registered at P.S. Vibhuti Khand, District Lucknow, U.P., FIR No. 141 of 2023 dated 21.05.2023 registered at P.S. Tulsipur, District Balrampur, U.P. and FIR No. 230 of 2020 registered at P.S. Sadarpur, District Jodhpur, Rajasthan or any other FIR other than the one mentioned in the chart mentioned in para 4 hereinabove which the petitioner may be involved with. Petitioner may pursue independent proceedings with regard to those matters.

33. The writ petition is allowed in terms of the directions given hereinabove.

.....J. [B.R. GAVAI]J. [K. V. VISWANATHAN] New Delhi;

22nd August, 2024.