

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

Sr. No.211

CRM-M No.44060 of 2016 (O&M)

Date of decision: 17.05.2017

Gurjit Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. HPS Ishar, Advocate
for the petitioner.

Mr. Neeraj Yadav, AAG, Punjab.

Mr. Ranjan Lakhanpal, Advocate
for the complainant.

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DEEPAK SIBAL, J. (Oral)

Through the present petition filed under Section 439 Cr.P.C., the petitioner seeks regular bail in FIR No.70 dated 07.06.2013, registered under Sections 420/506 IPC, at Police Station Chohla Sahib, District Tarn Taran.

The allegations against the petitioner are that he accepted ₹12.40 lakhs from the complainant on the pretext of sending him to Canada. However, after having received such amount, the complainant was not sent to Canada. The afore amount was also not returned.

Seeking regular bail for the petitioner, learned counsel submits that the petitioner has been in custody for about 01 year and 03 months; there is a delay of about 07 years in lodging of the FIR; charges have not yet been framed and since there being 12 witnesses cited by the prosecution, the

trial is not likely to conclude in the near future; the allegations of having accepted ₹12.40 lakhs from the complainant on the pretext of sending him abroad are palpably false; ₹10 lakhs had been paid by the complainant to the petitioner for importing a machine from England in connection with which the petitioner and the complainant twice visited England; the matter had been enquired into by the Chandigarh Police in which the complainant was also associated which found the petitioner to be innocent and that the petitioner, on the basis of similar allegations, has been granted bail by this Court in three other FIRs.

In support of his case counsel for the petitioner has placed reliance upon the following orders passed by this Court – (1) order dated 28.11.2016 in *CRM-M No.41094 of 2016 – Gurjit Singh vs. State of Punjab*, (2) order dated 16.12.2016 in *CRM-M No.37021 of 2016 – Gurjit Singh vs. State of Punjab* and (3) order dated 02.03.2017 in *CRM-M No.44269 of 2016 – Gurjit Singh vs. State of Punjab*.

Learned State counsel as also counsel for the complainant have opposed the grant of bail to the petitioner on the ground that the petitioner was involved in other criminal cases; at an earlier point of time, the petitioner was declared a proclaimed offender and that there is a grave apprehension that the petitioner would tamper with the evidence and may also abscond.

It is not disputed that the petitioner has already been in custody for 01 year and 03 months; in the trial since the charges have not even been framed and there are 12 witnesses cited by the prosecution it is not likely to conclude in the near future and that there is a delay of about 07 years in lodging of the present FIR.

The record has further revealed that on similar allegations against the petitioner, an enquiry was conducted by the Chandigarh Police in which the complainant was also associated. The enquiry had found the petitioner to be innocent. The relevant findings of such enquiry read as under:-

“Enquiry: During enquiry complainant as well as alleged and other three persons namely Harpreet Singh, Lakhwinder Singh and Surinder Singh having complaints with similar type of allegations joined the inquiry and submit their statement. Alleged Gurjit Singh Gill also join the enquiry and filed the complaint to PW against the Gurmail Singh and others. Alleged Gurmail Singh states in his reply that he qualified engineer and one of the director of Flying Agro Services Pvt. Ltd. and is working as the technical director in the company. His company in the business of contract harvesting till June to 2011 and import of agriculture equipment machinery from abroad. Present complainant Gurmail Singh is also one of the said company and under the pressure of his in-law he had recruited Rupinder Kaur, Parminder Singh, Harpreet Singh in company. Gurmail Singh was their team leader and responsible for marketing and sales of Agriculture machines imported from abroad in India. Gurmail Singh and his team members usually visit abroad to get information about the machinery. In year 2008, the company came to know that Gurmail Singh and his team members were evolved in illegal activities and company served a show cause notice and initiated enquiry against them. After enquiry the company removed them from the company employments and Parminder Singh, Harpreet Singh and Rupinder Kaur, handed over their post dated cheques against the payment which they had collected from the company

clients are deal. During enquiry said employees had pointed fingers on Gurmail Singh one of the director for wrong doing. The company issued show cause notice to Gurmail Singh who later on admits is involvement illegal activities against the company and had resigned on 31.03.2009. Gurmail Singh and Gurjant Singh had given their post dated cheques against the payment which they had collected from the company clients. Later on Gurmail Singh and other employees files false against him in Punjab. When the company presented the post dated cheques given by said persons in the bank same bounced due to insufficient funds then his company initiated proceedings against U/s 138 N.I. Act. All the said persons and their relatives are pressurizing him to withdraw the cases and other legal proceedings against them and in lieu of that they have filed the present false and frivolous complaint against him. During enquiry Gurmail Singh and other could not produce any evidence regarding the allegation of the payment made to Gurjit Singh. However, Gurmail Singh submit memorandum of Association and article of the company where Gurmail Singh is cited as one of the director of the company. Gurmail Singh as initiated proceedings U/s 138 N.I. Act against Gurjit Singh and others and same pending in the Court.

Conclusion: *From the enquiry so far and documents submitted the both the parties it has been revealed that Gurmail Singh, Gurjant Singh, Parminder Singh, Harpreet Singh and Rupinder Kaur were employees of the company and the company removed them from the company as they were found involved in the illegal activities after taking post dated cheques against the pending dues. When company produce the cheques in the bank same bounced due to insufficient funds. And company initiated proceeding U/s 138 N.I. Act. The*

present complainant with the aim to pressurize Gurjant Singh one of the Director of the company has filed the present complaint. In view of above facts no cognizable offense made out hence complaint may be filed please.”
(emphasis supplied)

Though the above enquiry is not conclusive of the petitioner's innocence, the issue with regard to his guilt certainly becomes debatable and the same would only be deciphered during the course of the trial.

In at least three other cases which were lodged against the petitioner on similar lines, this Court vide three separate orders has granted the petitioner regular bail.

The relevant portions of such judgments read as under:-

CRM-M No.41094 of 2016 – Gurjit Singh vs. State of Punjab,
decided on 28.11.2016

“The allegations against the petitioner in this regular bail application under Section 439 Cr.P.C are that the petitioner-Gurjit Singh along with Gurmail Singh, complainant in this case have entered into a business agreement, whereby, they have floated a Company under the name and style of Flying Agro Services Pvt. Ltd and that during the course of business both of them who happened to be the Directors of this Company had a dispute over profits arising out of their business transactions leading to settlement of dispute by virtue of Annexure P/8. The contentions of the learned counsel for the petitioner that initially the petitioner had lodged a criminal complaint under Section 138 of Negotiable Instrument Act on 02.1.2012 and it is subsequent as a counter blast the present complainant too filed a criminal case before the Senior Superintendent of Police, Chandigarh which was investigated and allegations were found to be untrue and

it is subsequent after concealment of the first complaint, as a consequence, the complainant managed to lodge the present FIR.

The factual aspect has not been disputed by the learned State counsel and in the light of the fact that nothing is to be recovered from the petitioner and that the petitioner is in custody since 08 months and trial is not likely to be concluded in near future and no useful purpose would be served by keeping the petitioner behind the bars, without adverting anything on the merits of the case, the present petition for grant of regular bail is allowed. Petitioner be admitted to bail to the satisfaction of the trial Court.”

CRM-M No.37021 of 2016 - Gurjit Singh vs. State of Punjab,
decided on 16.12.2016

“Appreciating the submissions, admittedly petitioner is in custody for more than nine months. The irrefutable and unrebutted documents placed on record by way of (Annexures P2, P3, P4 and P19 Colly) and the fact that initially on similar allegations, the police of Chandigarh had filed the complaint of complainant and that the occurrence as per the FIR in question (Annexure P1) is alleged to have taken place from 01.01.2002 to 2008 and thus, after almost 11-6 years, present allegations have been levelled and thus, a distressing feature for the prosecution in view of the strong documentary evidence to bring forth the conduct of the complainant which is elicited from these documents and the fact that the investigation and trial will take its own time and no useful purpose will be served by keeping the petitioner in custody, impels this Court to allow the prayer made. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Tarn Taran.”

CRM-M No.44269 of 2016 - Gurjit Singh vs. State of

Punjab, decided on 02.03.2017

“It is not disputed that the petitioner has been in custody for over one year. Till date none of the 12 witnesses cited by the prosecution have been examined and therefore it is unlikely that the trial would conclude in the near future. The fact that the FIR has been got lodged by the complainant after an inordinate delay of about five years after the occurrence also cannot be lost sight of. The same allegations as in the FIR were made through a complaint filed earlier by the complainant before the Chandigarh Police which was inquired into and in which the complainant was found to be an employee of the company of which the petitioner was the Managing Director and the petitioner was found to be innocent.

The afore referred orders passed by this Court also support petitioner's case. The operative part of the order dated 16.12.2016 reads as under:-

“Appreciating the submissions, admittedly petitioner is in custody for more than nine months. The irrefutable and un rebutted documents placed on record by way of (Annexures P2, P3, P4 and P19 Colly) and the fact that initially on similar allegations, the police of Chandigarh had filed the complaint of complainant and that the occurrence as per the FIR in question (Annexure P1) is alleged to have taken place from 01.01.2002 to 2008 and thus, after almost 11-6 years, present allegations have been levelled and thus, a distressing feature for the prosecution in view of the strong documentary evidence to bring forth the conduct of the complainant which is elicited from these documents and the fact that the investigation and trial will take its own time and no useful purpose will be served by keeping the petitioner in custody, impels this Court to allow the prayer made. Accordingly, the petitioner is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Tarn Taran. The petition stands disposed off accordingly.”

Keeping in view the above, I am of the

opinion that the petitioner deserves to be admitted to regular bail.”

Keeping in view the above, I am of the opinion that the petitioner deserves to be admitted to regular bail to the satisfaction of the trial Court.

In view of the fact that the petitioner is involved in other cases also, I deem it just and expedient to direct the trial Court to insist on heavy local sureties.

Nothing observed herein above shall be considered to be an expression of opinion by this Court on the merits of the case.

If the petitioner is found indulging in any criminal act or misusing the concession of bail granted by this Court, it would be open to the State to seek cancellation of bail granted through this order by filing an appropriate application before the competent Court/this Court.

(DEEPAK SIBAL)
JUDGE

May 17, 2017

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<i>(i) Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>(ii) Whether reportable</i>	<i>Yes/No</i>