

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

CRM-M No.19535 of 2018

Date of Decision: 14.09.2018

Giri Raj

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. P.S. Ahluwalia, Advocate
for the petitioner.
Mr. Manish Dadwal, A.A.G., Haryana.
Mr. Lokesh Sharma, Advocate
for the complainant.

DAYA CHAUDHARY, J.

Petitioner-Giri Raj has filed the present petition under Section 439 of the Code of Criminal Procedure for grant of regular bail to him in case FIR No.287 dated 05.10.2016 registered under Sections 406, 420 and 120-B of the Indian Penal Code at Police Station Julana, District Jind, during pendency of trial.

Learned counsel for the petitioner submits that initially the FIR was registered under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code but after the investigation, the challan was presented under Sections 406 and 420 IPC read with Section 120-B of the Indian Penal Code. Thereafter, the charges were framed under Sections 406, 420 and 120-B of the Indian Penal Code. Learned counsel also submits that the allegations in the FIR relate to non-payment or under payment of the bills raised by the complainant party which does not attract the criminal liability and cannot form the basis of criminal prosecution. The petitioner was working as an agent of ***Ram Dev International Limited, Karnal*** and any

lapse on behalf of the principal, the agent cannot be held vicariously liable and no criminal liability can be fastened upon him. The allegations in the present case are that the paddy was procured but the payment was not forwarded to the commission agents and the amount was misappropriated by the petitioner. Learned counsel for the petitioner also submits that it is clear from the Bank Account statements of the petitioner's firm that the amount was disbursed in the year 2013-14 and 2014-15 to the commission agents. The petitioner received only 48,00,000/- in his bank account, out of which, Rs.17,00,000/- was disbursed to various commission agents, which is clear from the statements of witnesses recorded under Section 161 of Cr.P.C. At the end, learned counsel for the petitioner submits that in the bail petition filed by the petitioner before the Sessions Court, it has not taken into consideration that earlier bail application was withdrawn as the charges were not framed by the trial Court. The complainants party has already availed the remedy by incorporating themselves as operational creditors of Ram Dev International Limited and the insolvency proceedings against the company are pending before the National Company Law Tribunal, Delhi, whereby the attempts are being made to recover the amount due towards the complainants and other commission agents by auctioning the properties, factory and buildings etc. The petitioner is in custody since 01.10.2017. The investigation has been completed; challan has been presented and the charges have also been framed. There are total 66 witnesses and the offence is triable by the Magistrate. No useful purpose would be served by keeping the petitioner in custody.

Learned counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in case ***Sanjay Chandra vs CBI 2011***

(4) RCR (Criminal) 898, Dipak Shubhashchandra Mehta vs C.B.I and another 2012(1) RCR (Criminal) 870, judgment of this Court in case **Shamsher Singh vs State of Punjab** passed in **CRM-M No.1685 of 2014** decided on **10.03.2014** as well as judgments of Delhi High Court in case **Suresh Kalmadi vs CBI 2012(1) CCR 323, Mahesh Kumar vs Central Bureau of Investigation 2014(8) RCR (Criminal) 1650** in support of his arguments.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner. He also submits that serious allegations of cheating and misappropriation of amount are there and the period of custody undergone by the petitioner is less and also the fact that it is a second petition and the petitioner is not entitled for bail.

Heard the arguments of learned counsel for the petitioner as well as learned State counsel. I have also perused the contents of the FIR as well as other documents available on the file.

Earlier petition was filed before presentation of challan and framing of charges and the present petition has been filed under the changed circumstances.

Undisputedly, initially the FIR was got registered under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code and ultimately, the challan was presented and charges were framed for offences punishable under Sections 406, 420 IPC read with Section 120-B of the Indian Penal Code.

As per allegations levelled in the FIR, the complainants were running shops at Anaj Mandi, Julana and farmers of that area used to sell their agricultural produce through them in the market. Accused Naresh

Kumar and Suresh Kumar had set up a company in the name and style of Ram Dev International Limited, Karnal and said persons were the Directors. They were also having a rice mill at Karnal and used to prepare the rice from the paddy after purchasing the same from surrounding market and used to export rice. The present petitioner has been alleged to have a firm in the name and style of M/s Devi Sahai Ruli Ram and used to do the work of commission agent. As per allegations, the petitioner had approached the complainants and other commission agents in the month of October 2014 stating that Ram Dev International Limited, Karnal has appointed the petitioner as their agent to procure the paddy from Commission Agents of Grain Market at Julana on behalf of the company. It was further alleged that a huge quantity of paddy was purchased during the period of October 2014 to January 2015 and the amount of Rs.10,60,784/- was due towards complainant-Inderjit Singh and Rs.23,75,246/- was due towards complainant-Ram Parkash and approximately Rs.6 crores was pending towards all the commission agents against Ram Dev International Limited. Certain payments were made by the Directors of Ram Dev International Limited to the petitioner to pay the same further to the commission agents but it was not paid to them and transferred the amount in the account of firm owned by his brother Ajay Kumar. It is also the allegation that accused persons had purchased large number of properties in their names at different places after embezzlement of the amount of commission agents.

As per arguments of learned counsel for the petitioner, the dispute is of non-payment of amount to the complainant party and no criminal liability can be fastened upon the petitioner. The petitioner has acted as an agent on behalf of Ram Dev International Limited and cannot be

held vicariously liable. It is also not disputed that the amount has been disbursed to various commission agents as has been admitted in the statements recorded under Section 161 Cr.P.C. The complainants have also availed the remedy by incorporating themselves as operational creditors of Ram Dev International Limited and the insolvency proceedings against the company are pending before the National Company Law Tribunal, Delhi for recovery of the amount. Meaning thereby, the complainants are also availing the remedy of recovery of amount due towards Ram Dev International Limited. The petitioner is in custody since 01.10.2017. The challan has been presented and charges have been framed. The offence is triable by the Magistrate. There are total 66 witnesses and even a single witness has not been examined so far. In spite of undertaking given before this Court, the complainant has not appeared before the trial Court. The case was adjourned on three occasions but still he has not appeared.

In a landmark decision in [Sanjay Chandra v. Central Bureau of Investigation](#) reported as (2012) 1 SCC 40, the Hon'ble Supreme Court of India crystallized the law in respect of regular bail in the following paragraphs:-

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial

but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

47. In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the learned counsel for the parties and the case laws relied on in support of their respective contentions. We clarify that we have not expressed any opinion regarding the other legal issues canvassed by the learned counsel for the parties.

48. In the result, we order that the appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of Rs. 5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions:

(a) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(b) They shall remain present before the court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining

absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

(c) They will not dispute their identity as the accused in the case.

(d) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the learned Special Judge, CBI, that fact should also be supported by an affidavit.

(e) We reserve liberty to CBI to make an appropriate application for modification/recalling the order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court.”

In [Rajat Sharma v. State Of Nct Of Delhi](#) reported as 2015(3)

JCC 1493, the Delhi High Court was pleased to observe in paragraph 7 of the report as follows:-

“7. A plain reading of the above decision makes it crystal clear that the object of bail is to secure the appearance of the accused person at his trial. It is further observed that the object of bail is neither punitive nor preventative and that deprivation of liberty must be considered a punishment unless it is required to ensure that the accused person will stand his trial when called upon. The Supreme Court further observed that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he will tamper with the witnesses. To encapsulate, the Hon'ble Supreme Court has held that pre-conviction detention should not be resorted to except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.”

As per judgments of Hon'ble the Apex Court in cases ***Babba vs State of Maharashtra 2005(11) SCC 569*** and ***Vivek Kumar vs State of U.P. 2000(9) SCC 443***, in case, there is a delay in the trial, the bail should be granted to the accused. The Court, while granting bail, is to consider the circumstances, the factors such as the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence;

reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and prima facie satisfaction of the court in support of the charge are to be taken into consideration. In addition to aforementioned ingredients, the Court is to see the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses.

It has been held by Delhi High Court in case ***Anil Mahajan vs Commissioner of Customs 2000(3) RCR (Criminal) 242*** that in case, the Economic offence of grave nature is there, the bail cannot be refused simply on the ground that it was a case of grave economic offence.

In ***Gudikanti Narasimhulu and Others Vs. Public Prosecutor, reported in AIR 1978 Supreme Court 429, V.R. Krishna Iyer, J.***, observed that "Bail or Jail?" - at the pre-trial or post-conviction stage - largely hinged on judicial discretion. The learned Judge held that personal liberty was too precious a value of our constitutional system recognised under [Article 21](#) that the crucial power to negate it was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. It was further held that deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. The learned Judge quoted Lord Russel who had said that bail was not to be withheld as a punishment and that the requirements as to bail were merely to secure the attendance of the prisoner at trial. ***According to V.R. Krishna Iyer, J.***, the principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment. After holding that it makes sense to assume that a man

on bail has a better chance to prepare and present his case than one remanded in custody the learned Judge observed that if public justice is to be promoted mechanical detention should be demoted.

The principles laid down by the Supreme Court in ***Gurcharan Singh and Others Vs. State (Delhi Administration) AIR 1978 Supreme Court 179*** were followed by the Supreme Court in ***Miss Harsh Sawhney Vs. Union Territory*** reported in ***AIR 1978 SCC 1016*** and in ***Mohan Singh Vs. Union Territory, Chandigarh***. In ***Mohan Singh Vs. Union Territory, Chandigarh***, reported in ***AIR 1978 Supreme Court 1095***, even though the counsel for the State argued that the corruption of which the accused was prima facie guilty was substantial, the Supreme Court held that it was not sufficient reason to refuse bail. In paragraph 2 of the said judgment the Supreme Court held thus :-

"Counsel for the State pressed before us that the corruption of which the appellant was guilty prima facie according to the results of the investigation) was substantial. Let us assume so. Even then refusal of bail is not an indirect process of punishing an accused person before he is convicted. This is a confusion regarding the rationale of bail. This Court has explained the real basis of bail law in ***Gurcharan Singh Vs. State (Delhi Administration) AIR 1978 SC 179; (1978 CrL. L.J. 129)***.

In Gurbaksh Singh Sibbia etc. Vs. The State of Punjab, reported in AIR 1980 Supreme Court 1632, the Supreme Court has observed that Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back as in 1924 it was held by the High Court of Calcutta in ***Nagendra Vs. King Emperor, AIR 1924 Calcutta 476***,

that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the *Allahabad High Court in K.N. Joglekar Vs. Emperor, AIR 1931 Allahabad 504*, that **Section 498 of the Old Code** which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding [Section 497](#) which corresponds to the present [Section 437](#). The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by [Section 498](#) and that the only principle which was established was that the discretion should be exercised judiciously. The Supreme Court referred also the decision of the *Allahabad High Court in Emperor Vs. H.L. Hutchinson, AIR 1931 Allahabad 356*, wherein it was held that the principle to be deduced from the various sections in the [Cr.P.C.](#) was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the

High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows :

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

In *State Vs. Jaspal Singh Gill, reported in AIR 1984 Supreme Court 1503*, the Supreme Court expressed the view that the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being required at the trial, reasonable apprehension of witnesses being tampered with, the larger interest of the public or the State and similar other considerations.

The Delhi High Court in *Anil Mahajan's case (supra)* has summarised certain points, which are as under :-

(a) Personal liberty is too precious a value of our Constitutional System recognised under [Article 21](#) that the crucial 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. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys

freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is *prima facie* guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in [Section 437\(1\)](#) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under [Section 439\(1\)](#) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in [Section 437\(1\)](#) do not apply to the special powers of the High Court or the Court of Session to grant bail under [Section 439\(1\)](#). Unlike under [Section 437\(1\)](#), there is no ban imposed under [Section 439\(1\)](#) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for bail under [Section 439\(1\)](#), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under [Section 437\(1\)](#) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the

circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are: (i) the likelihood of the accused fleeing from justice and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under [Section 437](#) of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under [Section 437\(1\)](#) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute

prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.

It has also been held in various judgment of Hon'ble the Apex Court as well as of this Court that criminal prosecution is not a proceeding for recovery of the dues of the investors but is meant for punishing the guilty. In case of economic offences, the object of criminal prosecution is to protect the investors and help them in recovery of the money. It can be a presumption but the detention of accused in the jail would not aid the recovery. It has also been held that the purpose is not to recover the amount but to punish the accused persons.

Hon'ble the Apex Court in *Sanjay Chandra's* case (supra) has held in para Nos.27 and 28 as under :-

“27. In 'Bihar Fodder Scam', this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period of more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pre-trial prisoners would not serve any purpose.

28. *We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.*”

In ***Dipak Shubhashchandra Mehta's*** case (*supra*), Hon'ble the Apex Court while relying upon the judgment of ***Sanjay Chandra's*** case (*supra*) allowed bail in case involving economic offences of huge magnitude. This Court in ***Anil Kumar's*** case (*supra*) scanned various authorities on the issue and held in favour of accused for release on bail.

Keeping in view the facts and circumstances of the present case and by considering that the offence is triable by Magistrate; the custody which is more than 11 months; even a single witness has not been examined; the delay is there on the part of the complainant himself as alternative remedy has already been availed and no useful purpose would be served by keeping the petitioner in custody, the present petition is allowed and petitioner, namely, Giri Raj is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

(DAYA CHAUDHARY)
JUDGE

14.09.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No