

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

**Criminal Misc. No. M-36661 of 2017
Date of decision: 30.08.2018**

R.N. Shukla

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Deepanshu Matya, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana
for the respondent-State.

Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Arjun Shukla, Advocate
for the complainant.

Daya Chaudhary, J.

The present petition has been filed under Section 439 Cr.P.C. on behalf of petitioner-R.N. Shukla for grant of regular bail to him in case FIR No.312 dated 14.06.2015 registered under Sections 406, 420, 467, 409, 471 and 201 of Indian Penal Code, at Police Station DLF Phase II, Gurgaon, District Gurgaon.

Learned counsel for the petitioner submits that the FIR was registered after a delay of two years and there is no explanation for lodging the FIR with delay. Learned counsel further submits that the petitioner has falsely been implicated in the case at the instance of the complainant and Investigating Agency whereas he has no concern with the alleged offence.

The alleged amount was donated by M/s Geefive Global Projects Private

Limited on 02.08.2013 and 30.08.2013 for getting exemption from the

Income Tax and after getting the amount of donation, letters of thanks were also sent to the company along with proper receipts. The petitioner has accepted the amount in the official capacity. The amount was deposited in the account of organization of the petitioner and not in his personal account. Learned counsel also submits that the complainant has falsely implicated the petitioner in the case with some ulterior motive whereas the petitioner has acted at the instance of main accused-Rahul Chaturvedi, who is still absconding. Learned counsel also submits that there is record of income tax return, details of audit of the organization and the invoice, and the same is with the complainant and his company. The petitioner is in custody since 28.04.2017 and the trial may take long time to conclude. No purpose would be served by keeping the petitioner in custody. The offence is triable by the Magistrate.

Learned State counsel has not disputed the custody period; the stage of trial and also the fact that main accused-Rahul Chaturvedi is still absconding.

Learned counsel for the complainant has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the amount was not deposited in the account of the organization but it was deposited in the account of the petitioner. Learned counsel for the complainant further submits that by passing a detailed order, the bail application filed by the petitioner was dismissed by the Additional Sessions Judge, Gurugram and the petitioner does not deserve concession of regular bail. Learned counsel also submits that serious allegations are there against the accused persons that they obtained a forged resolution from his institute

and converted the amount into donation. The documents relating to

institution are not in the custody of the Police.

At the end, learned State counsel as well as learned counsel for the complainant have opposed grant of regular bail on the ground that the petitioner is not resident of State of Haryana and he may abscond from the Court proceedings so some strict condition be imposed upon him.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents available on the file.

No doubt personal liberty is precious value of our Constitution of India. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. Even the accused persons are entitled to freedom and every opportunity to look after his case and to establish his innocence. A person, who is on bail, has a better chance to prepare and present his case than the person, who 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 was in custody. Accordingly, it is stated that grant of bail is the rule and refusal is the exception as stated in judgments rendered by Hon'ble the Apex Court in *Anil Mahajan vs. Commissioner of Customs and another*, 84 (2000) DLT 854, *Gurcharan Singh and others vs. State (Delhi Administration)*, AIR 1978 Supreme Court 179 and *Gudikanti Narasimhulu and others vs. Public Prosecutor*, AIR 1978 Supreme Court 729.

Delhi High Court in *H.B. Chatruvedi vs. C.B.I.*, 2011(6) RCR (Criminal) 2402, has summarized the legal position under the similar circumstances as follows: -

"14. The legal position emerging from the above discussion can be summarised as follows :

(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 Bail Appln. 572/2010 Page 5 of 12 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 favor 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.

In the present case, the allegations are there against the

donation and the same was deposited in the account of accused persons. Although this fact has been denied by the petitioner on the ground that he acted as employee of the company and on the asking of main accused-Rahul Chaturvedi, who is still absconding, he accepted the amount. The petitioner is in custody since 28.04.2017. All the documents are either in the custody of company or with the Investigating Agency. The allegations are matter of evidence, which shall be tested by the trial Court during trial. Offences are triable by the Magistrate. No purpose would be served by keeping the petitioner in custody because of his long incarnation.

Accordingly, the present petition is allowed and the petitioner (R.N. Shukla) is directed to be released on regular bail to the satisfaction of the trial Court subject to the following conditions:

- (1) The petitioner shall furnish a personal bond in the sum of ₹10 lacs (Rupees Ten Lacs) with the sureties in the like amount to the satisfaction of the trial Court.
- (2) The petitioner shall surrender his passport, if already not seized, any hold by him, before the trial Court.
- (3) He shall not leave country without permission of Court.
- (4) He shall not tamper with the evidence or do any act which will create a reasonable ground to assume that the petitioner is trying to create hurdle in the investigation or trial of the case which will entail cancellation of bail.
- (5) Any other condition which may be imposed by the trial Court.

30.08.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No