

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20012-2019 (O&M)
Date of decision: 29.05.2019

Abdul Kadir Ebrahim Kachi

... Petitioner

Vs.

U.T. Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Sharma, Advocate
for the petitioner.

Ms. Ashima Mor, APP, U.T. Chandigarh.

Mr. Anuj Raura, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.230 dated 17.05.2018 under Sections 420, 120-B IPC, registered at Police Station Manimajra, Chandigarh.

Learned counsel for the petitioner submits that as per allegations in the FIR, got registered by complainant Sushil Kapoor, in which it is stated that he is proprietor of Komal Agencies and the accused persons namely Sanjay Shah, Madam Desmond Olivia, Dr. Fred Godson and Mr. Cosmos Peto have taken money from him in three different bank accounts, for the purpose of supplying herbal seeds, however, neither the seeds were supplied nor the amount was given back. It is further submitted that the petitioner is proprietor

of K.K. Enterprises and is not named in the FIR and only an amount of Rs.1.82 lac was paid to him from the account of co-accused, who is proprietor of Apex Enterprises and it was on account of clearance of some earlier dues with Asim Diwan. Learned counsel further submits that the petitioner is in custody since 24.06.2018; investigation is complete; challan stands presented on 27.07.2018; charges were framed on 20.12.2018 and thereafter, statement of one prosecution witness has been recorded and despite a lapse of 60 days, the prosecution has failed to complete the evidence.

Learned counsel for the petitioner has further argued that during the investigation, co-accused Arif Siddique Patel was arrested and on his disclosure statement, it has come that after receiving the amount from the complainant, he has given some of the amount to the present petitioner and there is no allegation against him that the complainant has given any amount directly to the petitioner except Rs.1.82 lac. It is further submitted that the order dated 03.04.2019, vide which co-accused Arif Siddique Patel has been granted the concession of regular bail, reads as under: -

“...Learned counsel for the petitioner submits that as per the allegations in the FIR, complainant Sushil Kapoor has stated that he has paid Rs. 48 Lakh to the accused persons in connection with doing some business of herbal seeds to multiply the amount 205 times.

Learned counsel for the petitioner further submits that as per the allegations in the FIR, the complainant has paid the aforesaid amount to three other co-accused and in fact the amount was deposited in the account of Komal Enterprises, which was owned by co-accused Sumit Gautam.

Learned counsel for the petitioner further submits that petitioner was arrested on 09.06.2018 and thereafter, the challan

was presented on 29.08.2018 and charges were framed on 20.12.2018 and the first date for recording the prosecution evidence was 30.01.2019. Learned counsel has, thus, argued that the petitioner was not named in the FIR and the only allegation against him is that aforesaid Komal Enterprises has transferred the amount in his name.

Learned counsel for the petitioner has further argued that offences are triable by the Court of a Magistrate and the petitioner is entitled to bail under the provisions of Section 437(6) Cr.P.C. as from the date of starting of the evidence, a period of sixty days has lapsed and prosecution evidence is not yet concluded.

Learned counsel, appearing for the U.T., Chandigarh, on instructions from ASI Kiranta, has not disputed the factual position as submitted by learned counsel for the petitioner....”

Learned APP for U.T. Chandigarh, on instructions from SI Baljeet Singh and assisted by learned counsel for the complainant, has however opposed the prayer for bail on the ground that the petitioner is involved in two more FIRs; one registered at Hisar and another registered at Mumbai. It is submitted that the petitioner was taken in custody in the present case on production warrants from Mumbai.

Learned counsel for the complainant has argued that all the accused persons are hand in gloves with each other and after receiving the amount from the complainant, they have distributed the same and have not repaid the amount.

In reply, learned counsel for the petitioner has submitted that the petitioner has been granted bail in both the aforesaid FIRs registered at Hisar and Mumbai. It is further submitted that as per the statement given by the complainant, the aforesaid amount of Rs.1.82 lac was transferred in the account

of co-accused Aseem Patel, who is yet to be arrested.

Without commenting anything on merits of the case, considering the fact that co-accused of the petitioner has already been granted the concession of regular bail under the provisions of Section 437 (6) Cr.P.C.; the petitioner was not named in the FIR and the allegations against him are that his co-accused, after receiving the amount from the complainant, has transferred some amount in his account, which according to him, is on account of some payment due against said co-accused and also considering the fact that the petitioner is in custody since 24.06.2018 and conclusion of the trial will take long time, as the offences are triable by the Court of Magistrate, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to produce him before the Illaq Magistrate, where FIR No.199 dated 26.06.2018 is pending so that the concerned Court at Mumbai may pass appropriate order, if he has already been released on bail.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

29.05.2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No