

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

**Crl. Misc. No. M-21915 of 2019
Date of Decision: July 19, 2019**

Kamal Kishore Goyal

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Baljit Mann, Advocate
for the petitioner.

Mr. Raj Kumar Makkar, Sr. D.A.G., Haryana.

Mr. K.S.Khehar, Advocate
for the complainant.

SURINDER GUPTA, J.(Oral)

The second petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 37 dated 19.01.2018 registered for the offences punishable under Sections 406, 420, 467, 468, 471, 120-B of Indian Penal Code (for short, "IPC") at Police Station City Sector-14, Gurugram, District Gurugram.

Heard.

The present FIR was registered by complainant-Vikram Gupta against the petitioner and his wife on the allegations of fraud in the business transactions.

Learned counsel for the complainant submits that under a Memorandum of Understanding executed on 01.08.2016, a sum of ₹11crores 36 lakhs was outstanding against the petitioner out of which he

requests and reminders was not paid. 41 vehicles were given to the complainant under the settlement are not free from encumbrances and are hypothecated with their financial institutions and bank. This shows that the petitioner has committed fraud with the complainant.

Learned counsel for the petitioner submits that the petitioner was arrested on 23.04.2018 and in jail since then. Earlier, he was charge-sheeted for the offence punishable under Sections 406, 420, 467, 468, 471, 120-B IPC by the learned trial Court. However, lower revisional Court vide order dated 03.06.2019 has observed that no offence punishable under Sections 406, 467, 468 IPC are made out against the petitioner. It is a case of business dealings under which payments were made to the complainant from time to time. After presentation of challan prosecution has examined only one witness till date and now supplementary challan has been filed against wife of the petitioner and fresh trial has been initiated.

Earlier bail application of the petitioner was dismissed by a co-ordinate Bench with observation that allegations against him were quite serious in nature. However, after the order passed by the Court of revision, the charges under Sections 406, 467, 468 IPC have been diluted. Petitioner is in custody for last about 15 months. It is a case triable by Magistrate. Even after 15 months custody of petitioner trial is still at initial stage

Keeping in view the above fact, period of incarceration of petitioner and that entire allegations are based on documentary evidence which cannot be tampered, this petition is allowed. Petitioner-Kamal Kishore Goyal is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- (c) He shall not leave the country without the previous permission of the Court.

July 19, 2019

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**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No