

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28176-2019

Date of Decision: 28.11.2019

Jagjit Singh Ahlawat

.....Petitioner

Versus

State of Haryana

.....Respondent

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. J.S. Mehndiratta, Advocate, for the petitioner.

Mr. Satish Saini, DAG, Haryana.

Mr. R.S. Rai, Senior Advocate, with
Mr. Manish Soni, Advocate, for the complainants.

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Harnaresh Singh Gill, J.

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No. 126 dated 20.05.2018 registered under Sections 406, 420, 465, 467, 471, 477-A, 120-B IPC at Police Station Manesar, District Gurugram.

The facts, which are relevant for decision of the present petition are that aforesaid FIR stands registered at the instance of the President of Engelberg Cooperative Group Housing Society and its other office bearers on the allegations that the petitioner and others had committed a fraud of Rs.3.00 crore by siphoning off the funds of the Society, which as a matter of fact, were meant for the construction purposes. During the investigation, the petitioner was arrested on 2.10.2018 and

it was revealed that he was instrumental in operating the bank account of the complainant Society; that the petitioner had withdrawn/got transferred the amount out of the account of the complainant Society and had shifted the same either to his account or to the accounts of his close relations and that the petitioner had shown the payments on the basis of forged bills.

It may be noticed here that in this case after completion of investigation, challan was presented in the Court on 28.12.2018.

During the trial, the petitioner moved an application for interim bail, which was declined by the learned trial Court on 3.1.2019. However, the learned Additional Sessions Judge, Gurugram vide order dated 16.1.2019 granted interim bail to the petitioner with a direction to surrender before the Area/Duty Magistrate on 18.03.2019. The petitioner did not surrender and rather sought extension of the interim bail, but the same was declined by the learned Additional Sessions Judge, Gurugram on 30.4.2019. Thereafter, the petitioner had filed an application under Section 438 Cr.P.C., which was declined vide order dated 10.5.2019 passed by the learned Additional Sessions Judge, Gurugram.

Thereafter, the petitioner moved an application under Section 439 Cr.P.C. for grant of regular bail before the learned Additional Sessions Judge, Gurugram, which was declined vide order dated 27.5.2019. The relevant extracts from the order dated 27.5.2019 would read as under:-

“8. From the perusal of the file, it is revealed that the first bail application filed on behalf of the accused petitioner seeking interim bail under Section 439 of Cr.P.C. was allowed and he was admitted to interim bail till 17.03.2019. Thereafter, he did not surrender before the court and moved a subsequent application seeking extension of the interim bail order dated 16.1.2019 before this Court on 14.03.2019, which was declined on 30.04.2019 and the accused was directed to surrender before the court of Ld. Area/Duty Magistrate forthwith. Still he did not surrender before the Court and filed an application seeking concession of anticipatory bail on 3.5.2019, which was declined by this Court vide order dated 10.05.2019.

9. There is no change in the circumstances of the case since the declining of the prayer of the accused-petitioner seeking extension of the bail order dated 16.1.2019 which was declined by this Court vide order dated 30.4.2019. Until and unless there is a change in the circumstances while considering the subsequent application on behalf of the same accused, concession of bail cannot be granted to the petitioner.

10. Moreover, the petitioner has wrongly asserted the present bail application as the first one by alleging that no such bail application had earlier been moved on his behalf and/or decided by the Court. He was under a bounden duty to disclose the true status of the bail application filed by him earlier before this Court. Surprisingly enough the affidavit annexed along with the bail application is furnished by the same counsel who

was representing him while filing the bail application under Section 438 of Cr.P.C. on his behalf, which was declined by this Court vide order dated 10.05.2019. Still his counsel affirmed in his affidavit that except the present bail application, no other bail application has been filed/withdrawn/decided in any court as narrated by the accused and the said affidavit is attested on 20.05.2019.

11. In view of the above and circumstances, it is suggested to the Court that the intention of the accused-petitioner is not clear even with the court while seeking a discretionary relief of bail and as such also, he is not entitled to the concession of the regular bail as prayed for.”

I have heard learned counsel for the parties and have gone through the case file.

Learned Senior Counsel appearing for the petitioner, contends that the petitioner has falsely been implicated in the above noted FIR inasmuch as during the process of investigation, the petitioner had rebutted all the allegations of the complainant. It is further contended that when the members of the complainant-Society were asked to deposit the enhanced cost of the land, they in turn, got the present FIR registered against the petitioner. It is further contended that while the petitioner had been in judicial custody, a settlement was arrived at between the complainants and the wife and the son of the petitioner and such settlement had been reduced into writing in

the form of MoU dated 21.12.2018, but the complainants had backed out from the said settlement. It is further stated that barring a very short period of interim bail granted during the custody, the petitioner has been in custody since the date of arrest i.e. 2.10.2018. It is yet further submitted that as the investigation has since been completed and the petitioner is no longer required for interrogation, he deserves to be enlarged on bail by this Court.

On the other hand, on the strength of the reply filed by the respondent-State, it is submitted by the learned State counsel that during the investigation, it was revealed that all the expenditure of the Society had been done fraudulently, inasmuch as no yearly audit was conducted or approved by the members and that one audit conducted during the period 2009-14 was not approved by any member of the Society and thereafter no audit was conducted. It is further submitted that in the instant case, the amount of embezzlement made by the petitioner runs into crores; that the petitioner had withdrawn various amounts i.e. Rs.12,77,500/-; Rs.16,09,000/-; Rs.1,13,80,000/- in cash from the Society Account for his personal use and that an amount of Rs.82,75,00/- was transferred to his PNB personal bank account and Rs.12,00,000/- in the account of his personal Company i.e. Ahlawat Developers and Promoters and that in this way the petitioner has embezzled an amount of Rs.2,61,16,500/- belonging to the Society. Thus, a prayer for the dismissal of the petition has been made.

Learned Senior Counsel appearing for the complainants submits that keeping in view of the embezzlement of the amount running into crores, the petitioner does not deserve the concession of regular bail. While referring to Annexures C.1 to C.4 (Collectively), it is submitted that the said document, which is the statement of account of the bank, clearly establishes the fraudulent transfer of the funds of the Society by the petitioner to his accounts and/or the accounts of his close relations and/or withdrawal of the cash amount for his personal use.

While rebutting the submission of the learned counsel for the petitioner regarding the complainants backing out of the MoU, the learned Senior Counsel for the complainants submits that at no point of time, the petitioner had any intention to settle the matter. While terming the said MoU as a ruse to somehow get benefit of the regular bail from this Court, it is submitted that the said MoU cannot be made or considered the basis for grant of concession of regular bail to the petitioner.

After hearing the learned counsel for the parties, I do not find any merit in the present petition and the same is liable to be dismissed.

This Court has extracted in detail, the factual position noticed by the learned Additional Sessions Judge, Gurugram, while declining the petitioner's application for regular bail. The said factual position makes it apparently clear that the petitioner's conduct is as such that he does not deserve the concession of regular bail. The embezzled amount runs into

crores. Though, the learned Senior Counsel for the petitioner has heavily relied upon the MoU, yet no bona-fide efforts were either shown or made by or on behalf of the petitioner before this Court, for the settlement of the matter, if any. The petitioner being the custodian of the amount deposited by the members of the Engleberg Cooperative Group Housing Society, instead of utilizing the same for the construction and allied purposes, had siphoned off the said funds and/or converted the same to his personal use. Thus, this Court is not inclined to grant the concession of regular bail to the petitioner.

In view of the above, finding no merit in the present petition the same is hereby dismissed.

It is made clear that the observations made above are only for the purposes of the instant order and shall have no effect on the decision of the main case.

(HARNARESH SINGH GILL)
JUDGE

28.11.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No