IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.
Cr.MP(M) No.1850 of 2020
Decided on: 14.12.2020

Purshotam Singh .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Petitioner	**:**	Mr. Manoj Pathak, Advocate.
For the Respondent	**:**	Mr. Arvind Sharma, Additional Advocate General, for the State.

Sandeep Sharma, Judge (oral):

Through Video Conferencing

Bail petitioner namely Purshotam Singh, who is behind the bars since 17.9.2019, has approached this Court in the instant proceedings filed under Section 439 Cr.PC, for grant of regular bail in FIR No. 5 of 2018 dated 19.5.2018 under Sections 418, 419, 420, 465, 467, 468, 471 and 120-B of IPC registered at Police Station State CID Bharari, Shimla District Shimla, Himachal Pradesh.

2. Status report on behalf of the respondent-State has been filed. I.O. has also come present with records. Perusal of status report/record reveals that on 19.5.2018, complainant Sh. Amar Singh lodged a complaint at PS State CID Bharari, alleging therein that in the

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

year 2014, he had taken one policy bearing 000296439 of DHFL for sum of Rs. 22,000/-, whereafter person namely Shyam Kapur, having mobile phone No. 92184-05063 persuaded him to take 14-15 polices in his name or in the name of his family members from Future General Insurance Company, Life Insurance Company, Shri Ram Life Insurance and India First life Insurance Company. Person namely Shyam Kapoor assured the complainant that he would receive full amount of policy after payment of two premiums within a period of one year, which in total comes out to be Rs. 4,50,000/-. In the year, 2017, person namely Abhishek Madaan, claiming him to be employee of Reserve Bank of India informed the complainant that he has received withdrawal voucher of Rs. 10,76,000/- in the name of the complainant, but before getting the aforesaid amount, he is required to pay certain amount and as such, complainant on the askance of the aforesaid person, deposited sum of Rs. 6,31,000/- in total in the bank account bearing 915010008509828 in the name of Pinki Aggarwal, but fact remains that amount invested/deposited by the complainant was not refunded, rather person named herein above with the aid and assistance of other persons named in the status report kept on extorting money from the complainant showing him fear of income tax department. Status report reveals that accused named in FIR/status report made complainant

deposit total sum of Rs. 34,00,000/- in various accounts by misleading him, but till date, not even a single penny has been returned to him. Status report reveals that on the basis of information submitted by the complainant, police though carried out investigation but till date, have not been able to arrest the persons named by the complainant or who made him to deposit/invest his hard earned money in the insurance policies of various companies. During investigation police found that sum of Rs. 57,900 was deposited by the complainant in the account bearing 02740501516806 United Bank, Chandni Chawk on the askance of person namely Sanju Mathur, who claiming himself to be police official informed the complainant that person namely Rajesh Gupta and Gurmeet Kaur have fled away and he can help him to get his money back, but for that purpose, he may have to deposit sum of Rs. 58000/- in Central Bank of India Chandni Chawk, Delhi, and Rs. 57900/- in United Bank, Chandni Chawk, Delhi.

3. During investigation, police found that aforesaid bank accounts were in the name of person namely Vipin Kumar. Police after having perused the record of crime Branch Delhi found that case bearing No. 109 of 2017 stands already registered against the person namely Vipin Kumar alias Purshotam for cheating. On 17.9.2019 police brought present bail petitioner to police Station State CID Bharari, where

he admitted that his real name is Purshotam Kumar and he is resident of Village Salahanagar, Tehsil Lohni District Ghaziabad, U.P. As per investigating agency, bail petitioner admitted that he had opened these bank accounts and as such, he came to be named in the FIR detailed herein above and since 17.9.2019 he is behind bars.

4. Mr. Arvind Sharma, learned Additional Advocate General, while fairly admitting factum with regard to completion of investigation and filing of challan in the competent court of law, contends that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, prayer having been made on his behalf for grant of bail, deserves to be rejected outrightly. Learned Additional Advocate General submits that one case under Section 420 and120B of IPC already stands registered against the petitioner at Delhi and as such, it would be not in the interest of justice to enlarge him on bail at this stage because in the event of his being enlarged on bail, he may not only flee from justice, but may also temper with the evidence.

5. Having heard learned counsel for the parties and perused the material available on record, this Court finds that at no point of time, complainant named bail petitioner in his complaint, rather his allegation is against the persons named in the Status report. Status report reveals that

at no point of time, bail petitioner asked the complainant to deposit some money in his bank account, rather sum of Rs. 57900/- came to be deposited in the bank account bearing No. 0274050156806, United Bank Chandni Chawk by the complainant on the askance of person namely Sanju Mathur, who claiming himself to be police officials asked the complainant to deposit the aforesaid amount, enabling him to get the money of the complainant recovered. No doubt, status report reveals that aforesaid bank account in United Bank of India was found to be in the name of the bail petitioner and in this account, sum of Rs. 57900 was deposited by the complainant, but there is no evidence suggestive of the fact that aforesaid amount was deposited by the complainant on the askance of the bail petitioner. Mere fact that bank account as referred herein above was in the name of the bail petitioner is not sufficient to conclude complicity of the petitioner in the alleged crime, rather in this regard, cogent and convincing evidence is required to be led on record that bail petitioner is part of a racket, which made complainant to deposit the amount in various accounts on one pretext or the other. Though investigation reveals that bail petitioner opened the bank accounts in United Bank of India and Central Bank of India, using fake voter ID card and Pan Card, but that is not sufficient at this stage to conclude complicity, if any, of the petitioner in the crime at hand.

Leaving everything aside, there is nothing in the status report suggestive of the fact that till date, main kingpins as have been named by the petitioner stand arrested by the Investigating Agency, rather it appears that all the main accused, who on one pretext or the other made complainant to deposit his hard earned money have been absconding and police in hot haste manner has filed challan in the competent court of law. This Court cannot lose sight of the fact that petitioner is behind bars for more than one year and his guilt, if any, is yet to be established on record by leading cogent and convincing evidence. Hon'ble Apex Court as well as this Court in catena of judgments have repeatedly held that one is deemed to be innocent till the time, his/her guilt is not proved in accordance with law and as such, it would not be fair and in the interest of justice in case petitioner is allowed to remain behind the bars, during trial, especially when nothing remains to be recovered from him and all the main accused are absconding. Apprehension expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting him to stringent conditions.

6. Needless to say, object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is

whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

7. The Hon'ble Apex Court in ***Sanjay Chandra versus Central Bureau of Investigation*** (2012)1 Supreme Court Cases 49; held as under:-

> ***" 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 can be 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. 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 India , 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. 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 propose of giving him a taste of imprisonment as a lesson."***

8. In **Manoranjana Sinh Alias Gupta** versus **CBI** 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-

> ***" This Court in Sanjay Chandra v. CBI, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that 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 found guilty. It was underlined that the object of bail is neither punitive or preventive. This Court sounded a caveat 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 a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him to taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care ad caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and the grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."***

9. The Hon'ble Apex Court in ***Prasanta Kumar Sarkar v. Ashis Chatterjee and Another*** (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

> ***(i)*** ***whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;***
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> ***(ii)*** ***nature and gravity of the accusation;***
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> ***(iii)*** ***severity of the punishment in the event of conviction;***
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> ***(iv)*** ***danger of the accused absconding or fleeing, if released on bail;***
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> ***(v)*** ***character, behaviour, means, position and standing of the accused;***
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> ***(vi)*** ***likelihood of the offence being repeated;***
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> ***(vii)*** ***reasonable apprehension of the witnesses being influenced; and***
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> ***(viii)*** ***danger, of course, of justice being thwarted by grant of bail.***

10. Reliance is placed on judgment passed by the Hon'ble Apex Court in case titled ***Umarmia Alias Mamumia v. State of Gujarat***, **(2017) 2 SCC 731**, relevant para whereof has been reproduced herein below:-

> ***"11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. (See: Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC 569).***

11. Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh** vs. **State of Uttar Pradesh & Anr.,** decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Hon'ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an

appropriate case. The relevant paras of the aforesaid judgment are reproduced as under:

> ***"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.***
>
> ***3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.***
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> ***4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an***

> ***Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.***
> ***5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons.***

12. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs. 2,00,000/- with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with following conditions:

- ***(a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;***
- ***(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;***
- ***(c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and***
- ***(d) He shall not leave the territory of India without the prior permission of the Court.***
- ***(e) He shall handover passport to the Investigating Agency.***

13. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

14. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this application alone. The petition stands accordingly disposed of.

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14th December, 2020 **(Sandeep Sharma),**
manjit **Judge**