IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.
Cr.MP(M) No.2098 of 2020
Decided on: 23.12.2020

Sanjeev Kumar .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

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

For the Petitioner	**:**	Mr. Manoj Pathak, Advocate.
For the Respondent	**:**	Mr. Sudhir Bhatnagar, Additional Advocate General.

Sandeep Sharma, Judge (oral):

Through Video Conferencing

Bail petitioner namely Sanjeev Kumar, who is behind the bars since July, 2020, has approached this Court in the instant proceedings filed under Section 439 Cr.PC, for grant of regular bail in FIR No. 171/2020 dated 15.6.2020 under Sections 419, 420, 468, 471 and 120-B of IPC, registered at Police Station Nurpur, District Kangra, Himachal Pradesh.

2. Status report filed in terms of order dated 27.11.2020, reveals that on 11.6.2020, complainant Shubh Raj sent a complaint to SDO Nurpur, District Kangra, H.P., alleging therein that between 12.5.2020, to 23.5.2020, sum of Rs. 48,90,374/- has been illegally/unauthorisedly

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

withdrawn from his saving bank as well as pension accounts by some unknown persons. He alleged that factum with regard to unauthorized withdrawal from his saving and pension accounts came to his knowledge on 11.6.2020, when he visited his Bank i.e. Punjab National Bank, Nurpur and as such, appropriate action accordance with law be taken against the accused.

3. During investigation, police found that on 17.3.2020, mobile number given for SMS alert to the bank was changed from 94181-06167 to 86270-16345. Police further found that on 12.5.2020, one Debit Card Inter Sole was issued in the name of the complainant from PNB Kundali, Haryana. Between 13.5.2020 to 23.5.2020, total sum of Rs. 48,90,374/- came to be withdrawn online from the saving, pension accounts as well as FDR of the complainant. The aforesaid amount of Rs. 48,90,374/-, subsequently, was found to be transferred in the name of some jewelers at Rewari, Haryana. Police after having investigated bank accounts of jewelers obtained their bank details. The jewelers as named in the status report disclosed to the police that two persons covering their faces with masks on account of Corona had made aforesaid online payment qua the purchase of gold ornaments after having shown their Aadhaar Card as identity proof. All the jewelers as named in the status report expressed their inability to recognize persons, who had transferred amount in their

accounts. On 12.5.2020, police also took into custody record of PNB Kundali, whereby Debit Inter Sole Card was issued in the name of the complainant. As per investigation, co-accused Vinod Kumar on 13.7.2020 disclosed that person namely Tarun and Vinod Kumar had obtained mobile Sim No. 86270-16345 from person namely Raj Kumar vide bill No. 2060 dated 5.2.2020. Using aforesaid sim, main accused Karan, Veer Singh and Sachin got the SMS alert number changed from the original mobile number bearing 94181-06167 of the complainant to 86270-16345. On 16.3.2020 above named accused reached Chamba and allegedly on 17.3.2020 illegally and unauthorisedly withdrew the amount from saving as well as pension account of complainant.

4. During investigation, police took into custody I-Pad (make Apple) of accused Rakesh Kumar, who was employed at PNB Met Life Insurance as Manager. The accused met each other in Palampur in the month of February and got mobile Number 86270-16345 issued in favour of the main accused Tarun and Vinod Kumar on the basis of forged documents. During investigation, police found that the present bail petitioner Sanjeev Kumar had stayed with main accused Karan and Tarun at Palampur in a hotel *Firangi, Raja Ka Baag*.

5. Precisely, the allegation of the prosecution against the present bail petitioner is that bail petitioner went with main accused

Karan Taneja, Tarun Gupta and Vinod Kumar to Kangra in his car and helped them in getting sim No. 86270-16345 on the basis of forged documents. Since accused Karan Taneja, Tarun Gupta and Vinod Kumar unauthorisedly and illegally withdrew sum of Rs. Rs. 48,90,374/- from the bank account of complainant using sim No. 86270-16345, which was allegedly got issued by Sanjeev Kumar in favour of the accused herein above, petitioner came to be named in the FIR and since July, 2020, he is behind bars.

6. Mr. Sudhir Bhatnagar, learned Additional Advocate General, while fairly admitting factum with regard to filing of challan in the competent court of law contends that since main accused Karan Taneja and Tarun Gupta are absconding, it would not be in the interest of justice to enlarge the bail petitioner on bail, who till date, has not disclosed the whereabouts of the above named main accused. Besides, above, Mr. Bhatnagar, contends that since sum of Rs. Rs. 48,90,374/- allegedly misappropriated by the accused Karan Taneja and Tarun Gupta in connivance with the present bail petitioner is yet to be recovered, it would not be in the interest of justice to enlarge the bail petitioner on bail, who in the event of his being enlarged on bail, may not only flee from justice , but may also temper with the prosecution evidence.

7. Having heard learned counsel for the parties and perused the material available on record, this Court finds that as per status report entire sum of Rs. Rs. 48,90,374/- was illegally withdrawn/used by the main accused namely Karan Taneja and Tarun Gupta with the help and aid of the other accused namely Veer Singh, Vinod Kumar, Sachin Sood, Vineet Malhotra, Rakesh Kumar and present bail petitioner Sanjeev Kumar. All the above named co accused save and except present bail petitioner already stand enlarged on bail vide orders dated 6.11.2020, 28.11.2020 and 30.9.2020, passed by the learned ACJM Nurpur, District Kangra, H.P., in bail applications No. 41-XXII/2020, 43-XXII-2020 and 46-XXII-2020. Though present bail petitioner, prior to approaching this Court in the instant proceedings, had also approached the court of learned Sessions Judge District Kangra at Dharamshala, but his prayer for grant of bail was primarily rejected on the ground that main accused persons have not been arrested and as such, it would not be in the interest of justice to enlarge the present bail petitioner on bail.

8. Evidence collected on record by the Investigating Agency till date clearly reveals that main accused Karan Taneja and Tarun Gupta firstly, very cleverly got the mobile number of the complainant changed in bank records from 94181-06167 to 86270-16345 so that SMS alert Message in the event of withdrawal of money is not received by the complainant

and thereafter, they also got issued one Debit Card Inter Sole in the name of the complainant from PNB Kundali, Haryana. Using aforesaid Debit Card, above named main accused Karan Taneja and Tarun Gupta withdrew total sum of Rs. Rs. 48,90,374/- by purchasing jewelry from different jewelers at Rewari, Haryana. Precise allegation against the present bail petitioner is that on 12.3.2020, he enabled the main accused Karan Taneja and Tarun Gupta to have mobile sim No.86270-16345 from Kangra using fake identity of a person namely Raj Kumar and during this period, he also made his vehicle bearing No. HP 37F-9491 available for use to main accused Karan Taneja and Tarun Gupta.

9. At this stage, there is no evidence available on record suggestive of the fact that the bail petitioner unauthorisedly/illegally withdrew the amount, if any, from the bank account of the complainant, rather same, as per story of the prosecution, was withdrawn/used by main accused namely Karan Taneja and Tarun Gupta, who have been absconding from the day one. All the co-accused, who in one way or the other, allegedly helped the main accused Karan Taneja and Tarun Gupta already stand enlarged on bail and as such, there appears to be no justification to keep present bail petitioner behind the bars for indefinite period during trial. There is nothing on record that present bail petitioner is beneficiary of the alleged crime or any amount ever came to

be transferred in his bank account. Though bail petition having been filed by the petitioner has been opposed on the ground that the recovery is yet to be effected, but it is not understood that since such amount has been withdrawn/used by the accused namely Karan Taneja and Tarun Gupta, then how it can be recovered from the bail petitioner. Otherwise also, this court cannot lose sight of the fact that the bail petitioner is in judicial custody and challan stands filed in the competent court of law. Whether present bail petitioner helped the main accused Karan Taneja and Tarun Gupta in procuring Sim No. 86270-16345 from Kangra is matter of trial and such fact needs to be established on record by leading cogent and convincing evidence. Guilt, if any, of the petitioner is yet to be established on record and as such, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, which is still to commence. Hon'ble Apex Court as well as this court in catena of cases have repeatedly held that one is deemed to be innocent till the time his/her guilt is not proved in accordance with law. Apprehension expressed by learned Additional Advocate General that in the event of bail petitioner's being enlarged on bail, he may flee from justice, can be best met by putting him to stringent conditions.

10. 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.

11. 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."***

12. 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."***

13. 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;*
> ***(ii)*** *nature and gravity of the accusation;*
> ***(iii)*** *severity of the punishment in the event of conviction;*
> ***(iv)*** *danger of the accused absconding or fleeing, if released on bail;*
> ***(v)*** *character, behaviour, means, position and standing of the accused;*
> ***(vi)*** *likelihood of the offence being repeated;*
> ***(vii)*** *reasonable apprehension of the witnesses being influenced; and*

(viii) danger, of course, of justice being thwarted by grant of bail.

14. 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).***

15. 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.***
> ***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.***

16. 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.***

17. 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.

18. 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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23rd December, 2020 **(Sandeep Sharma),**
manjit **Judge**