

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

Date of Decision-18.03.2020

1. CRM-M No.2163 of 2020(O&M)

Daman Bhalla @ Lucky ... Petitioner

Versus

State of Punjab ... Respondent

2. CRM-M No.34448 of 2019(O&M)

Teena Vohra @ Teena Sharma ... Petitioner

Versus

State of Punjab ... Respondent

3. CRM-M No.20009 of 2019(O&M)

Dayal Chand Garg @ DC Garg ... Petitioner

Versus

State of Punjab ... Respondent

4. CRM-M No.21121 of 2019(O&M)

Paramjit Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikram Chaudhary, Sr. Advocate with
Mr. Sargan Saron, Advocate and
Mr. Rahil Mahajan, Advocate
for the petitioner in CRM-M No.2163 of 2020.

Mr. Kanwar Pahul Singh, Advocate
for the petitioner in CRM-M No.34448 of 2019.

Mr. J.S. Bedi, Sr. Advocate with
Mr. L.S. Chahal, Advocate
for the petitioner in CRM-M No.20009 of 2019.

Mr. A.P.S. Deol, Sr. Advocate with
Mr. H.S. Deol, Advocate
for the petitioner in CRM-M No.21121 of 2019.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.2163 of 2020 titled Daman Bhalla @ Lucky Vs. State of Punjab, CRM-M No.34448 of 2019 titled Teena Vohra @ Teena Sharma Vs. State of Punjab, CRM-M No.20009 of 2019 titled Dayal Chand Garg @ DC Garg Vs. State of Punjab and CRM-M No.21121 of 2019 titled Paramjit Singh Vs. State of Punjab are being disposed of. Since all the cases have arisen from one FIR, therefore, common facts are being noticed.

[2]. Prayer is for grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.450 dated 09.09.2017 registered under Sections 7, 13(1), 13(1)(a), 13(1)(b), 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act and Sections 409, 420, 467, 468, 471, 120-B IPC at Police Station Civil Lines, Police Commissionerate Amritsar.

[3]. A complaint dated 25.08.2017 was made by Dayal Chand Garg, Executive Officer, Amritsar Improvement Trust, Amritsar against Daman Bhalla, Accountant (DCFA CDC Charge) at Jalandhar who was previously posted as Deputy Controller, Finance and Accounts in Amritsar Improvement Trust, Amritsar for committing embezzlement of crores of rupees of Amritsar Improvement Trust, Amritsar in connivance with other co-accused. The FIR was registered at the instance of Satish Chandra, I.A.S. Additional Chief Secretary, Department of Local Bodies,

Government of Punjab against Daman Bhalla. During course of investigation number of accused were arrayed.

[4]. Daman Bhalla joined as Accountant in Amritsar Improvement Trust, Amritsar in the year 2001. In the year 2011, he was given additional charge of Deputy Controller Finance and Accounts (DCFA). The allegations are of forgery and misappropriation of the Trust amount. Challan was presented on 06.01.2018. Charges were framed on 17.03.2018. Prayer of Daman Bhalla for grant of regular bail in his first attempt was dismissed by the High Court vide order dated 02.08.2018 passed in CRM-M No.20518 of 2018. Against the aforesaid order dated 02.08.2018, Daman Bhalla filed Special Leave to Appeal (Criminal) No(s).8369 of 2018, which came up for hearing before the Hon'ble Apex Court on 25.04.2019 and the following order was passed:-

"Heard learned counsel for the parties.

We decline to interfere in this Special Leave Petition. The Special Leave Petition is dismissed accordingly.

However, we direct the Trial Court to proceed with the trial against accused Nos.2 to 6 who have already been arrested and are in jail. The trial against them be segregated and be concluded within six months but not later than end of December, 2019. The respondent-State through counsel has given assurance that the necessary steps will be taken to ensure early completion of the trial.

As regards the absconding accused Nos.1 and 7, assurance is given by the learned counsel for the respondent-State that steps will be taken to arrest them in right earnest.

If the main witnesses are already examined by the Trial

Court and the trial is not concluded before the time so given, the petitioner may file a fresh application for bail which may be considered on its own merits, provided the accused are not responsible for the delay in the conclusion of the trial.

Pending applications, if any, stand disposed of."

[5]. Perusal of the aforesaid order passed by the Hon'ble Apex Court would show that though the appeal was filed by Daman Bhalla alone, but other accused were also arrayed therein. As on date, one accused is absconding. In view of aforesaid order, the Hon'ble Apex Court directed that the trial of those accused who are in custody be segregated and be concluded within six months, but not later than end of December, 2019, provided the delay is not attributed to them.

[6]. Thereafter, the trial Court amended the charge-sheet. Fresh charges were framed on 09.10.2019/14.10.2019. On 05.11.2019, PW-1 Vishal Sharma was present and was partly examined-in-chief. His remaining examination-in-chief was deferred for want of further record. The witness was bound down for 08.11.2019. Other PWs were also summoned for the said date. On 08.11.2019, PW-1 Vishal Sharma was present and was further partly examined-in-chief. His remaining examination-in-chief was deferred for want of further record due to duties of Pairvai staff and Naib Court. The witness was bound down for 14.11.2019. An application under Section 205 Cr.P.C was also filed by accused Dayal Chand Garg. Reply to the said application was ordered to be filed on 14.11.2019. Other PWs were also summoned for the date

fixed. Production warrants against Satnam Singh, Paramjit Singh, Teena Vohra were also issued for the said date.

[7]. On 14.11.2019, no evidence was present. PW-1 Vishal Sharma did not come present. He was ordered to be summoned through bailable warrants. The application filed by Dayal Chand Garg for permanent exemption from appearance was dismissed. The case was adjourned to 19.11.2019 for prosecution evidence. On 19.11.2019, PW-1 Vishal Sharma was present and was further examined-in-chief. His cross-examination was deferred at the request of learned counsel for the accused. The witness was bound down for 21.11.2019 for cross-examination. Other PW Davinder Kumar, Accountant had also come for cross-examination, but due to paucity of time, he could not be examined. He was also bound down for the date fixed. Other PWs were also summoned for the said date. On 21.11.2019, PWs Vishal Sharma and Davinder Kumar were present for cross-examination. Learned counsel for the accused stated before the Court that accused Daman Bhalla is the main accused and learned counsel for accused Daman Bhalla should cross-examine the witnesses first. Learned counsel for Daman Bhalla filed an application for producing accused Daman Bhalla in the Court as he is an Accountant and for effective cross-examination, his assistance was required. The case was adjourned to 26.11.2019 with a direction to produce Daman Bhalla in Court. Other PWs were bound down for 26.11.2019 for cross-examination.

On 26.11.2019, PW-1 Vishal Sharma was present and was partly

cross-examined. His further cross-examination was deferred for want of some of the original record. The witness was bound down for 02.12.2019 for further cross-examination. Accused Daman Bhalla was ordered to be produced on the said date. On 02.12.2019, PW-1 Vishal Sharma was present and was partly cross-examined. His further cross-examination was deferred for want of record. The witness was bound down for 04.12.2019 for further cross-examination. PW Davinder Kumar who was bound down for the date was also present. However, he was discharged for the time being with the observation that he will be summoned for the purpose of his cross-examination after cross-examination of PW-1 Vishal Sharma. Daman Bhalla was directed to be produced on the said date i.e. 04.12.2019. The case was ultimately taken up on 05.12.2019. The presence of accused Dayal Chand Garg was exempted for 05.12.2019 only. PW-1 Vishal Sharma was present before lunch, but learned counsel for the accused was not present. However, after lunch session, learned counsel for the accused were present, but the witness was not present. The witness was ordered to be summoned through bailable warrants in a sum of Rs.5000/- with one surety in the like amount for 12.12.2019 for further cross-examination. Daman Bhalla was also directed to be produced on the said date. In the order of even date i.e. 05.12.2019, it was observed that at this stage, Vishal Sharma came present and stated that due to puncture of his vehicle, he could not appear after lunch.

Accordingly, his bailable warrants were recalled and he was directed

to come present on 12.12.2019 for further cross-examination. On 12.12.2019, PW-1 Vishal Sharma was partly cross-examined and PW-3 Balraj Sandhu was partly examined-in-chief. Further cross-examination of PW-1 and further examination-in-chief of PW-3 were deferred for want of record. The witnesses were bound down for 14.12.2019. Other unexamined PWs were also summoned for the said date. On 14.12.2019, personal exemption for one day was given to Dayal Chand Garg. PW-3 Balraj Sandhu was present and was partly examined-in-chief. His further examination-in-chief was deferred for want of record. PW-1 Vishal Sharma was present and was bound down for 19.12.2019 due to rush of work and Lok Adalat. Other unexamined PWs were also summoned for the said date.

[8]. On 19.12.2019, two PWs namely Kuljit Kaur, Clerk and Bhajan Kaur, Junior Assistant were present and were examined completely. One PW Balraj Sandhu, Junior Assistant was also present and was examined-in-chief partly for want of record. PW-1 Vishal Shama was also present, but could not be further cross-examined due to shortage of time. The case was adjourned to 03.01.2020 for remaining cross-examination of PW-1 Vishal Sharma and further examination-in-chief of PW Balraj Sandhu, who were bound down for the said date. The Court remained closed from 22.12.2019 to 02.01.2020 due to winter vacation. The order of the Hon'ble Apex Court dated 25.04.2019 was produced in Court vide which the trial Court was directed to conclude the trial within six months, but not later than end of December, 2019. The trial Court

observed that the efforts have been made to conclude the trial by giving short adjournments almost on daytoday basis, but as very bulky record is involved including thousands of documents and prosecution has cited 128 witnesses in the list of witnesses, so the trial could not be concluded. A report in this regard was ordered to be submitted to the Hon'ble Apex Court and the case was adjourned to 03.01.202 (however, the date was wrongly recorded as 03.02.2020 in the order). On 03.01.2020, one PW Ripan Kakkar was present and was examined-in-chief partly. His further examination-in-chief was deferred for want of record. It was stated by the learned Additional P.P. that bulky record is involved in the case, containing thousands of documents and the documents are lying in an almirah with the Ahlmad of the Court and examinations of the witnesses are being deferred as the record could not be traced out. He requested to summon Inspector Shivdarshan Singh, member of SIT who had investigated the case. The trial Court ordered that the record be produced on 07.01.2020 for further examination of Ripan Kakkar and other witnesses and Inspector Shivdarshan Singh was also ordered to be summoned for 07.01.2020 to assist the Ahlmad and Additional P.P. for the State to trace out the required documents to be produced on record. The witnesses Balraj Sandhu, Junior Assistant and Vishal Sharma were also directed to come present for remaining cross-examination of PW Vishal Sharma and further examination-in-chief of PW Balraj Sandhu. On 07.01.2020, PW-6 Ripan Kakkar was present and his examination was completed.

PW-3 Balraj Sandhu was also present and he was partly examined-in-chief. His further examination-in-chief was deferred for want of record. Inspector Shivdarshan Singh also came present and he was directed to assist Ahlmad and Additional P.P. to trace out the required documents either himself or to depute some other competent official for the said purpose. PW Balraj Sandhu, Junior Assistant and Vishal Sharma were also directed to come present on the said date for remaining cross-examination of PW Vishal Sharma and further examination-in-chief of PW Balraj Sandhu.

[9]. By referring to the aforesaid interlocutory orders, learned Senior Counsel for petitioner Daman Bhalla@ Lucky stated that the delay is not attributable to the petitioner as the adjournments were granted largely on the ground that record was not available.

[10]. In view of aforesaid facts, learned Senior Counsel for petitioner Daman Bhalla @ Lucky stated that the trial of the case is not going to be concluded in near future keeping in view 128 cited witnesses and thousands of documents to be relied by the prosecution. The Hon'ble Apex Court had granted only six months time for conclusion of the trial after segregation of the trial of the accused in custody. In any case, the trial was to be concluded by the end of December, 2019. As per order dated 19.12.2019, Additional Sessions Judge has observed that owing to the voluminous record to be relied by the prosecution and cited witnesses to be 128 in number, trial of the case could not be

concluded. A report in this regard be submitted to the Hon'ble Apex Court.

[11]. Learned counsel for the parties have not produced any order in respect of extending the period by the Hon'ble Apex Court within which the trial is to be concluded. Order dated 25.04.2019 passed by the Hon'ble Apex Court could not be complied with by the trial Court for the reasons recorded by the trial Court in the interlocutory orders. In the event of non-conclusion of the trial within the time specified, a liberty was granted to the petitioner Daman Bhalla to file fresh application for bail which was to be considered on its own merits, provided the accused are not responsible for delay in conclusion of the trial.

[12]. In view of aforesaid position, learned Senior Counsel for petitioner Daman Bhalla @ Lucky submitted that in view of order dated 25.04.2019 passed by the Hon'ble Apex Court, merits of the case need not be appreciated at this stage. He further submitted that the object of bail is to secure the attendance of the accused at the trial, that 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 and that it is indisputable that bail is not to be withheld as a punishment. Learned Senior Counsel further stated that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend

himself than if he was in custody. As a presumably innocent person, he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence. Learned Senior Counsel also submitted that grant of bail lies within the discretion of the Court and the same is regulated to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and judgment of the Court, a primary inquiry is whether bond would effect that end.

[13]. By referring to the aforesaid, learned Senior Counsel contended that heavy conditions can be imposed while releasing the petitioner on regular bail. He further submitted that same principle has been reiterated by the Hon'ble Apex Court in **Sanjay Chandra Vs. CBI, 2012(1) SCC 40, Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another, (2016) 1 SCC 152, Bhagirrathsinh Vs. State of Gujarat, (1984) 1 SCC 284** and **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273**. Learned Senior counsel also referred to **Criminal Appeal No.1831 of 2019 (Arising out of S.L.P. (Criminal) No.10493 of 2019)** titled **P.Chidambaram Vs. Directorate of Enforcement** decided on 04.12.2019.

[14]. By referring to the aforesaid judgments, learned Senior Counsel contended that basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the

exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same, the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstances, while considering the application for bail, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the conclusion will have

to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.

[15]. Learned Senior Counsel for Daman Bhalla @ Lucky further submitted that the bail can be granted to the accused on stringent conditions including deposit of his passport and heavy bail bonds and surety bonds in order to ensure his presence before the trial Court. Since the challan has been presented, therefore, there is no possibility of tempering with the evidence. Learned Senior Counsel further submitted that in **Sanjay Chandra's case (supra)**, the Hon'ble Apex Court has observed that when the under-trial accused are detained in custody to an indefinite period, Article 21 of the Constitution is violated. Every person detained or arrested is entitled to speedy trial.

[16]. In the present case, there are 128 cited witnesses. Only three PWs have been examined completely so far and four PWs have been examined partly. Statement of the witnesses runs in several pages and the documents on which reliance is placed by the prosecution, is voluminous. Even record is not traceable as on date. The trial of the case may take considerable time despite direction issued by the Hon'ble Apex Court. Accused/petitioner Daman Bhalla is in custody since 23.10.2017. In **Sanjay Chandra's case (supra)**, the Hon'ble Apex Court has held that it is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the accused is a serious one in terms of

alleged huge loss to the State exchequer, that, by itself, should not deter the Court from enlarging the accused on bail when there is no serious contention of the State that the accused, if released on bail, would interfere with the trial or tamper with evidence. The Hon'ble Apex Court also relied upon 'Bihar Fodder Scam' to observe that bail was granted after considering the seriousness of the charges alleged and maximum sentence of imprisonment that could be imposed including the fact that the accused were in jail for a period of more than six months as on the date of passing of the order in that case.

[17]. Learned Senior Counsel also referred to **Bail Application No.2484 of 2019, Crl. M.A. No.37260 of 2019** and **Crl. M.A. No.38212 of 2019** titled **D.K. Shivakumar Vs. Directorate of Enforcement** decided by the Delhi High Court vide order dated 23.10.2019 and contended that said judgment has been upheld by the Hon'ble Apex Court.

[18]. By referring to the aforesaid, learned Senior Counsel highlighted that while deciding the bail application, three factors have to be seen i.e. flight risk, tempering evidence and influencing witnesses. As regard flight risk, there is nothing on record. Regarding tempering of evidence, only few witnesses have been examined out of 128 cited witnesses and the documents relating to the case are in custody of the prosecution only. As regards, influencing witnesses, similar proposition is involved as only three

witnesses have been completely examined so far. There is no material to allege that the petitioner has tried to contact the witnesses by indirect mode of communication.

[19]. Taking into consideration the order dated 25.04.2019 passed by the Hon'ble Apex Court, I deem it appropriate to grant default bail to the petitioner Daman Bhalla @ Lucky with a liberty to the prosecution that in case, the Hon'ble Apex Court grants extension in time for conclusion of the trial, petitioner Daman Bhalla shall surrender before the trial Court and press for bail on merits. The present petition i.e. CRM-M No.2163 of 2020 is being disposed of purely on the basis of effect of order dated 25.04.2019 passed by the Hon'ble Apex Court and interlocutory orders passed by the trial Court thereafter, showing that the delay in the trial is not attributable to the accused. The order is being passed keeping in view the delay occurred in the trial and in view of rigour of order dated 25.04.2019 passed by the Hon'ble Apex Court. Liberty is granted to the prosecution to move an appropriate application before the Court for cancellation of bail of the accused in case of grant of extension for conclusion of the trial by the Hon'ble Apex Court.

[20]. So far as other accused are concerned, they are also granted bail in the light of observations made hereinabove. In case, the extension in time is granted by the Hon'ble Apex Court, other petitioners would also surrender before the trial Court and press for their bail on individual merits of the case. It is made clear that these

petitions are not being decided on merits and the same are being decided only on the basis of consequential effect of order dated 25.04.2019 passed by the Hon'ble Apex Court in the light of subsequent interlocutory orders passed by the trial Court.

[21]. In view of above, without meaning anything on merits of the case, the petitioners are directed to be released on regular bail subject to their furnishing heavy bail bonds/surety bonds to the satisfaction of the trial Court. Trial Court shall also ensure that passports of the petitioners are deposited with the trial Court as a condition precedent. In case, the petitioners are found to be involved in any process of tempering with the prosecution evidence or influencing the witnesses, the trial Court shall be within its competence to cancel the bail of the petitioners.

[22]. Nothing expressed hereinabove, shall be construed to be an opinion on merits of the case.

[23]. With the aforesaid observations, all the petitions stand disposed of.

(RAJ MOHAN SINGH)
JUDGE

18.03.2020
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No