

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

CRM-M No.3527 of 2020

Date of Decision : 29.09.2020

Devender Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. S.S. Momi, Advocate
for the Petitioner.

Mr. Anmol Malik, Dy. Advocate General, Haryana
for the Respondent/State
assisted by ASI Kheta Ram.

SUDIP AHLUWALIA, J. (ORAL)

The instant Petition has been filed under Section 439 of the Code of Criminal Procedure seeking Regular Bail on behalf of the Petitioner in case FIR No.0487, dated 12th October, 2019, registered under Sections 406/420 of the Indian Penal Code, 1860, at Police Station City Tohana, District Fatehabad.

2. The Petitioner has remained in detention in this case for almost 09 months after his custody started on 4th of November, 2019. In the interregnum, he was released on an interim bail on 7th May, 2020 due to outbreak of Covid-19 Pandemic, after which he voluntarily surrendered before the Jail Authorities on 30th of June, 2020 and has again remained in custody continuously thereafter.

3. The allegation in the FIR against the Petitioner happens to be

that he had cheated the Complainant of an amount of Rs.11,30,000/- on the premise of supplying them two Trucks at a low price of Rs.12,00,000/- in all, since those Vehicles were stated to have been taken over by the Financer from their original Owners due to default in payments.

4. Further, Ld. Counsel for the Petitioner has placed reliance on the decision of the Hon'ble Supreme Court in '**Sanjay Chandra Vs. CBI**' – **Criminal Appeal No.2178 of 2011 (Arising out of SLP (Crl.) No.5650 of 2011)**, wherein it was observed *inter alia* -

“25. Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds :- The primary ground is that offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary

*purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. This Court in **Gurcharan Singh and Ors. Vs. State, AIR 1978 SC 179** observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.*

26. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. 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 appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of

*the investigation and filing of the charge-sheet. This Court, in the case of **State of Kerala Vs. Raneef 2011 (1) R.C.R. Criminal 381 : 2011(1) Recent Apex Judgments (R.A.J.) 116 : (2011) 1 SCC 784**, has stated :-*

*“15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille.”*

27. In ‘Bihar Fodder Scam’, this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pre-trial prisoners would not serve any purpose.

28. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has

already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

5. In the present case, it transpires that after completion of investigation the Challan against the Petitioner was submitted long time ago and the Charges were framed on 1st February, 2020. However, evidence from the Prosecution Side could not commence thereafter obviously on account of the outbreak of Covid-19 Pandemic, and in the given circumstances, it is unlikely that the Trial can be completed in a reasonably forcible short period of time.

6. Further detention of the Petitioner is, therefore, not warranted in the interest of investigation, at this stage in view of the ratio laid down in *Sanjay Chandra's case (supra)*. As such, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court/Duty Magistrate concerned, who is at liberty to impose appropriate stringent conditions to ensure that the Petitioner is not able to flee from justice or otherwise tamper with the evidence/influence the witnesses.

7. Disposed off.

September 29, 2020

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

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