IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22982-2020

Date of Decision : September 30, 2020

SURINDER PAL SINGH ...PETITIONER

Vs.

STATE OF PUNJAB ...RESPONDENT

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. P.S.Ahluwalia, Advocate for the Petitioner.

Mr. Harbir Sandhu, A.A.G., Punjab for the State.

SUDIP AHLUWALIA, J.

This is an Application for Regular Bail in FIR No.76 Dated 23.05.2019 under Sections 420, 465, 467, 468, 471, 201, 477-A, 409 IPC and Section 13(1) of the Prevention of Corruption Act, 1988 registered at Police Station City Nawanshahr, District SBS Nagar.

2. Briefly, the allegations against the Petitioner are that the present FIR was registered on the basis of the complaint made by Manoj Kumar, Senior Regional Manager of Central Bank of India, wherein he stated that the Petitioner, who was working as Head Cashier in Central Bank of India at Nawanshahr Branch, was looking after the payment and receipt in day to day transactions of the Branch and was empowered to authorize various transactions. He fraudulently withdrew money from the Bank Accounts of different persons and this fact came to the notice of the Bank on 18.9.2018. He had also withdrawn Rs.1.05 Crore from the Accounts of the Customers and in this regard FIR No.161 dated 21.09.2018 was

registered against him. Apart from it, the Petitioner had also indulged in fraudulent transactions by preparing forged documents in order to commit fraud of Rs.97,59,955/- which led to registration of this FIR. He used to operate inoperative accounts of the customers by issuing Cheque Books in the name of those customers of the Bank and used to withdraw the amount from their accounts fraudulently.

3. Ld. Counsel for Petitioner has argued that the Petitioner has been falsely implicated in the present case as no fraud as alleged was committed by him. He has further contended that the Petitioner cannot be held responsible for the alleged fraud as the documents were being dealt by other officials of the Bank also. Even as per the allegations in the FIR, no offence is made out against the Petitioner as the account holders were operating their accounts and making the necessary withdrawals and deposits. The Petitioner was not the custodian of the said accounts nor he has made any entry in the record showing any transfer of the withdrawals as alleged in the FIR. Ld. Counsel further submitted that different employees posted in the Bank were dealing with the accounts and their maintenance and prayed for granting regular bail to the Petitioner.

4. In addition, it has been contended on behalf of Petitioner that the present FIR is just an attempt to extend the incarceration of the Petitioner against whom a similar FIR on very same set of allegations in the capacity as a Head Cashier in the Central Bank of India, Nawanshahr Branch, was lodged being FIR No.161 Dated 21.09.2018, in which, he was ordered to be released on bail by a Coordinate Bench of this Court in CRM-M-7820 of 2019 (O & M)

vide the Order passed on 24.05.2019 (Annexure P-2), after he had already remained in detention in the said case for almost 7 months. Thereafter, the Petitioner was arrested and implicated in another case by the Central Bureau of Investigation, in which the allegations against him were that he in criminal conspiracy with the Head of K.C.Group of Institutes had withdrawn the Scholarship amount from vouchers handed over to the students for Scholarship Schemes meant for the reserved categories, and had thereby defrauded the exchequer in his capacity as Cashier in the Central Bank of India at Nawanshahr Branch. He was thereafter granted bail in the said case registered by the CBI by the detailed Order passed by the High Court of Himachal Pradesh in Cr.MP (M) No. 409 of 2020 Dated 11.6.2020 (Annexure P-4) after having remained in detention in the said case for more than five months following his arrest on 3.1.2020. As such, the contention of Petitioner is that he is being motivatedly framed in the present FIR drawn up against him virtually on the same set of allegations, which were the subject matter of the previous FIR No.161 Dated 21.9.2018, only with a view to detain him in custody for an indefinite period. To support this contention, Ld. Counsel for Petitioner has relied upon the decision of Supreme Court in the case of **'Amitbhai Anilchandra Shah v. The Central Bureau of Investigation & Anr.' 2013(6) SCC 348**, in which it was held that where certain acts/offences are committed on different dates but otherwise form part of the same transaction, only one FIR is permissible.

5. The bail prayer has nevertheless however, been opposed on behalf of the State from whose side, it has been contended that

Petitioner in his capacity as Head Cashier of the Bank, had illegally and wrongly withdrawn the money of different persons by indulging in fraudulent transactions and by preparing forged documents in order to commit fraud of Crores of Rupees. To substantiate this contention, the State has placed on record the voluminous papers running into almost 450 Pages, which form a part of Challan already submitted against the Petitioner. This Court has perused the documents/material collected against him during investigation which form part of the Challan papers. On perusal of the same, it can be said that there is sufficient material available to prosecute the Petitioner for the offences imputed to him, although Ld. Counsel for Petitioner has submitted that the material so collected during investigation is insufficient and incomplete.

6. In this regard, Ld. Counsel for Petitioner has drawn the attention of Court to the fact that the Challan against the Petitioner was submitted on 22.5.2020, certain vital parts of investigation had not been completed inasmuch as even the sample signature of the Petitioner had not been collected during such investigation nor any substantive action was taken against his alleged accomplices in the crime involved, which fact is substantiated on perusal of Page 40 of the Challan Papers, which reads as under -

> *"Accused Surinderpal Singh's co-workers of Central Bank of India Nawanshahr on transfers have gone to various other stations, Supplementary challan will be given against the real culprits on joining of said co-workers. Original cheques and vouchers for the money withdrawn*

by the accused Surinderpal Singh by forging signatures in the bank and forms for opening the account bearing the signature or writings of the accused Surinderpal Singh have been obtained. Accused Surinderpal Singh's handwriting will be obtained from the Hon'ble Court and reconciled. Upon receiving of said report supplementary challan will be filed."

7. Ld. Counsel for Petitioner has further drawn attention of the Court to the fact that long after submission of the Challan on 22.5.2020 the sample signatures of the Petitioner were obtained as late as on 7.9.2020 and were thereafter sent for comparison to the Handwriting Expert. In this backdrop, the submission is that the Challan was filed against the Petitioner in a hurry just to keep him in detention artificially after he had been arrested in the present case only on the strength of a Production Warrant on 11.3.2020 just when he was ordered to be released on bail by the Himachal Pradesh High Court vide its Order of the said date, already referred to in Para 4 of this order.

8. In this regard, the Petitioner's counsel has cited several decisions in support of the contention that in case of economic offences where the investigation has already been completed, an indefinite incarceration of the accused is not justifed and his prolonged detention in this manner cannot be the indirect way of awarding him any punishment, which logically should follow after completion of the trial on merits. The foremost Citation in this regard is on the decision of Apex Court in **'Sanjay Chandra Vs. CBI' 2011**

(4) R.C.R. (Criminal) 898 and Ld. Counsel for Petitioner has specifically relied upon the following observations in this Judgment -

> ***"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 ally the apprehension expressed by CBI. "*

9. The aforesaid decision has also been quoted and accepted by the Supreme Court in case of '**Dipak Shubashchandra Mehta Vs. C.B.I. and Anr.' 2012(1) R.C.R. (Criminal) 870** and by this Court in **'Giri Raj Vs. State of Haryana' 2019(1) R.C.R. (Criminal) 530** and '**Anil Kumar Vs. State of Punjab' 2013(3) R.C.R. (Criminal) 854** as also by the Delhi High Court in **'Suresh Kalmadi Vs. CBI' 2012(5) R.C.R. (Criminal) 556,** in which it was observed -

> *"**13.** Thus the requirements that have to be balanced at this stage are the seriousness of the accusations, whether the witnesses are likely to be influenced by the Petitioners being enlarged on bail during trial and whether the accused are likely to flee from justice if released on bail. As stated earlier, prima facie a case for offence under Section 467 Indian Penal Code is made out, the punishment prescribed for which is up to life imprisonment. Thus, the accusations against the Petitioners are serious in nature. However, the evidence to prove accusations is primarily documentary in nature besides a few material witnesses. As held in Sanjay Chandra (supra) if seriousness of the offence on the basis of punishment provided is the only criteria, the Courts would not be balancing the Constitutional Rights but rather recalibrating the scales of justice."*

10. Similarly, in the case of **'Mahesh Kumar Vs. Central Bureau of Investigation' 2014(8) R.C.R. (Criminal) 1650**, the Delhi High Court after considering the ratio of the Apex Court's decisions in cases of **Sanjay Chandra and Dipak Shubhashchandra Mehta's**

(Supra) granted bail to the accused persons, who were similarly accused of economic offences under various Sections of P.C.Act inspite of having found that there was good material against them by observing inter-alia -

> *"**40**. Having perused the charge-sheet, prima facie it cannot be contended that the respondent/CBI has failed to make out a case of conspiracy for the offences punishable under Section 120B I.P.C. read with Sections 7, 8 and 12 of the PC Act. In any event, at this stage, the allegations levelled by the prosecution have to be taken on their face value. The Court must also ensure that there is no pre-judging and no prejudice is caused to either side, and the merits of the case must be left to be decided by the trial court [Ref: **Puran Etc. v. Rambilas & Anr. (2001) 6 SCC 338, Ram Govind Upadhyay v. Sudarshan Singh and Ors. (2002) 3 SCC 598** and **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr, 2004 (7) SCC 528].**"*

11. The situation of the Petitioner clearly appears to be covered by the ratio of aforesaid decisions since admittedly the Challan has been submitted against him more than four months ago and there is no requirement for his further detention especially in view of the fact that he was taken into custody in the present case before he could be released on bail granted to him by the Himachal Pradesh High Court. Ld. State Counsel has nevertheless also contended that considering the nature of offences involved there is every likelihood that the Petitioner will abscond and flee from justice on account of which he should not be released on bail. This submission, however, does not appear to be substantiated considering the previous background of the Petitioner's arrest and implication in FIR No.161 dated 21.9.2018. It

is a matter of record that he had previously been granted bail on 24.5.2019 by a Coordinate Bench of this Court in the said FIR registered against him. Thereafter he remained on bail and was also diligently attending the Trial Court as can be seen from the Zimni Order of the Court in the said case passed on 18.12.2019, a copy of which has been filed on behalf of Petitioner in this case on 24.9.2020. Perusal of the said Order passed by the Ld. Special Judge/P.C.Act, S.B.S. Nagar clearly goes to reveal that the Petitioner while on bail was physically present on that date with his counsel when partial examination of PW1 Manoj Kumar (who incidentally happens to be again the complainant in the present case) was recorded and then deferred at the instance of the prosecution side itself. The matter was thereafter adjourned to 20.2.2020 for the same purpose. However, the Petitioner was in the meantime arrested by the CBI on 3.1.2020 in connection with the case started against him in the State of Himachal Pradesh, in which he was ultimately granted bail on 11.3.2020, on which date, he was arrested in the present case on the strength of a Production Warrant while still in custody. It is therefore, clear that inspite of having been granted bail on 24.5.2019 in FIR No.161 of 2018 of the same Police Station, the Pettioner had never misused his liberty and was diligent in attending the Court till 18.12.2019, after which he was arrested, and there is no material to indicate that he had tried to flee away.

12. Even the next submission raised on behalf of State to the fact that if released on bail he could tamper with the evidence also appears to be unfounded since the Petitioner is admittedly suspended from his

post as Head Cashier in the concerned Bank, and is therefore, unable to have any access to the Bank record and documents, which would essentially constitute the evidence to conduct his prosecution, and this view was also taken by the Himachal Pradesh High Court in granting him bail in Para 9(d) of its relevant Order (Annexure P-4).

13. For the aforesaid reasons, this Court finds the Petitioner to be entitled to regular bail in the present case considering his long detention exceeding 6½ months, and the fact that Challan against him has been filed long ago. He is, therefore, ordered to be released on bail subject to imposition of appropriate terms and conditions to ensure his attendance, which are left to the discretion of the Ld. Trial Court/Duty Magistrate concerned.

(SUDIP AHLUWALIA)
JUDGE

September 30, 2020
AS/DPR

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No