IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.38943 of 2019(O&M)
Date of Decision: 04.02.2020

Inderjeet Singh and another .....Petitioner

Versus

State of Punjab .....Respondent

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

Present: Mr. Akashdeep Singh, Advocate
for the petitioners.

Mr. J.S. Ghumman, DAG, Punjab.

Mr. Simranjit Singh, Advocate
for the complainant.

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RAJ MOHAN SINGH, J.

[1]. Prayer is for grant of regular bail in case bearing FIR No.240 dated 21.09.2015 registered under Sections 420, 465, 468, 471, 120-B IPC at Police Station City Kapurthala, District Kapurthala.

[2]. Before registration of FIR, complaint bearing No.633-SPC dated 09.04.2015 was inquired by Superintendent of Police, Investigation Branch, Kapurthala. Vide order dated 08.09.2015, Superintendent of Police, Investigation Branch,

Kapurthala after going through the inquiry report of Inspector Yogesh Kumar, Incharge Economic Offences Wing, Kapurthala as well as statements and documents annexed therewith, found that neither name of such company has been revealed, nor as per documents annexed, such company was found. There has been some money transactions between both the parties which can also be gathered form the affidavit given by petitioner No.2 and Hardeep Kaur (still at large). The opinion of the District Attorney Legal was sought. The complainant moved a complaint before SHO, Police Station City Kapurthala on 19.03.2015 against nine persons. Out of total nine persons, Hemant, Pappa, Priya, Abhijeet, Suparna and Shannu were exonerated. Hardeep Kaur, Rashmi @ Sweety and Inderjeet remained in fray. Para Nos.3, 4, 5 and 6 of the complaint are relevant to be quoted hereasunder:-

> *"3. When I had gone to them next month for committee then accused No.1, 3, 5 and 6 were present there and asked about investment. I told them that I have consulted with my relatives who are abroad and if accused No.1 and 3 take guarantee then I am ready to invest. Immediately accused No.1 and 3 took guarantee of accused No.5 and 6 and I took 2 days time from accused to invest the money.*
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> *4. That after 2 days I went with Rs.2 lacs to house of accused No.1 where accused No.3, 4, 5, 6 and 9 were present. That on the guarantee of accused No.1, 3, 4*

and 9, I handed over the money to accused No.1 and 2 who after counting handed over the same to accused No.5 and 6. Accused No.5 and 6 also told me that if you invest more money within 1-2 months, then the time period will be considered as the same of the 1st investment.

5. That in start of March, 2013 I called up Hardeep Kaur and stated that I want to invest more money. Therefore, she sent accused No.1, Hemant and accused No.4 Priya to my residence and I handed over Rs.3 lacs to them. That after 3 days I again went to boutique of Hardeep Kaur and told her to call accused No.5 and 6 and tell them that I want to invest Rs.3 lacs more and they can take that money from me. Accused No.1 told the whole thing to accused No.5 and 6 on phone and they told that accused No.7 and 8 who are our children will come to boutique of accused No.1 and will collect the money. Next day accused No.1 came to my house and told me that accused No.7 and 8 have come to her boutique and you can hand-over the money. At that time I went with accused No.1 and handed over the amount to accused No.7 and 8. At that time accused No.1 to 4 gave assurance that your money will be doubled in 2 years.

6. That in October 2013, accused No.1 contacted me and told me that she has invested all her money in the company and now she needs Rs.12 lacs. If she takes out Rs.12 lacs from the company then everyone's profit will be reduced but I still did not agree to give 12 lacs. Then accused No.1 and 5 come to my residence and asked for Rs.12 lacs but I asked for some time. Then *after 2-3 days they took Rs.12 lacs from me which they had to return on 29.02.2014. But on 29.02.2014 accused No.1 and 5 came to me and said that if you take the money in March, 2015 then you will get Rs.18 lacs on which I agreed. This way I invested Rs.20 lacs in the company. It is pertinent to mention here that whenever accused No.5, 6, 7 and 8 use to come to Kapurthala to collect money, they use to come in one car which was driven by a Sikh gentlemen whom I can recognized if brought before me."*

[3]. Petitioner No.2 along with co-accused Hardeep Kaur had given an affidavit to the complainant on 10.10.2013 in the context of money transactions. In the context of complaint under Section 138 of the Negotiable Instruments Act, proceedings are pending, where accused therein are appearing after grant of bail. Para Nos.1 and 2 of the affidavit are reproduced hereasunder:-

"1. That we required some money for our personal needs therefore we have taken Rs.12 lacs cash from Sushma Anand w/o Naresh Kumar Anand, r/o H. No.31/68, Mohalla Khanjanchiyan, Kapurthala. In lieu of the amount we have given a cheque No.541996 dated 28.02.2014 amounting to Rs.12 lacs from our joint account No.20180545211 of SBI.

2. That we will return the above mentioned amount to Sushma Anand uptill 28.02.2014 and thereafter take back our cheque. If we do not return the amount then Sushma Anand has right to present the cheque into the *bank and take money from our account. She can also take any legal action and we will not object to it."*

[4]. The FIR in question has been registered on the basis of complaint dated 03.04.2015, wherein the complainant has alleged that the accused had taken away money form her in the context of chit fund. Hardeep Kaur introduced the complainant to the other accused. Pappa son of Bhishan Singh also took guarantee for getting back the money of the complainant.

[5]. Learned counsel for the petitioners submitted that the complainant seeks to improve her case at every stage while appearing as PW-1 at the time when the petitioners were proclaimed persons/offenders and the complainant sought to add date as 15.01.2013 when in the first week of 2013, the complainant told Hardeep Kaur that she wanted to invest Rs.10,00,000/- in the said company and the complainant asked her to call Rashmi Singh and Inderjeet Singh at her house. In the original version, no such date was given, whereas while appearing as PW-1, the complainant has given 15.01.2013 as a date when Rashmi Singh and Inderjeet Singh came at her residence. Similarly, she has tried to improve her case by pleading source of the amount of Rs.5,54,000/- from her account in Bank of Baroda, Branch Kapurthala and an amount of Rs.1,46,000/- was arranged from her house, an amount of

Rs.3,00,000/- from her daughter Rubby Sachdeva and daughter Shikha Lumba who had come from USA and Australia respectively. The aforesaid source was not pleaded in the original version. Similarly, an amount of Rs.5,00,000/- sought to be invested by the complainant was also not pleaded in the FIR for which she has deposed that in the first week of 2013, she again asked Hardeep Kaur for further investment of the aforesaid amount of Rs.5,00,000/- and she called Rashmi Singh and Inderjeet Singh and both came to her house on 10.03.2013. The complainant further gave new addition in the context of date dated 21.03.2013 and in respect of borrowing Rs.8,00,000/- from Som Nath son of Ram Lal who had withdrawn the same on 22.03.2013 from his account. The aforesaid witness has again appeared when petitioners were arrested. PW-1 has been examined on 02.12.2019 and her cross-examination is fixed for 19.02.2020.

[6]. Learned counsel further submitted that vide order dated 02.12.2019 passed by Chief Judicial Magistrate, PW-1 was partly examined-in-chief and her further examination-in-chief was deferred as the prosecution wanted to move an application under Section 319 Cr.P.C and the case was adjourned to 16.12.2019 for moving the aforesaid application. No such application was moved at the relevant time. The trial Court vide

order dated 16.01.2020 further noticed the aforesaid fact when the petitioners were produced by the jail authorities. Production warrants were issued for 16.01.2020 and the case was adjourned to 19.02.2020 for moving application under Section 319 Cr.P.C. By referring to the aforesaid, learned counsel stated that the trial of the case in any case would take long time in its culmination. Petitioner No.1 is suffering with seizures and old history of cerebrovascular accident (CVA). The medical condition of petitioner No.1 has been categorized as under:-

> *"He was giving chief complaints of Seizures and old history of cerebrovascular accident (CVA). Hence he was admitted in jail hospital on 28.06.2019. Patient took same medication as he was taking before coming to jail. He was discharged from jail hospital on 21.09.2019. He was referred to Civil Hospital, Kapurthala on 23.09.2019 with chief complaint of seizures and old case of CVA. He was checked and was given medication. He was advised CT scan Head either from GMC Amritsar or from Civil Hospital, Jalandhar. Hence he was referred to Civil Hospital Jalandhar on 27.09.2019 for CT scan head. He was given date of 28.09.2019 for CT scanning of head at Civil Hospital Jalandhar. His CT scan head was done on 28.09.2019. His CT scan gave the impression of age related cerebral atrophic changes."*

CVA is a stroke in the brain. CT Scan of petitioner No.1 gave impression of age related cerebral atrophic changes.

Petitioner No.1 on account of such stroke remained confined to hospital for about two months. Third accused Hardeep Kaur is still at large.

[7]. Per contra, learned State counsel duly assisted by learned counsel for the complainant submitted that vide order dated 13.06.2016, prayer for anticipatory bail made by the petitioners was dismissed by the High Court. On 22.10.2016, order dated 13.05.2016 for declaring the petitioners as proclaimed offenders was set aside with a liberty to the petitioners to appear before the trial Court and to apply for regular bail. In case of their non-appearance, order dated 13.05.2016 was ordered to be revived. Petitioners did not comply with the aforesaid order passed by the High Court and they were arrested on 28.06.2019. By referring to the aforesaid facts, learned State counsel duly assisted by learned counsel for the complainant stated that the petitioners are not entitled for grant of regular bail as they have delayed the trial of the case substantially and there are chances of their fleeing from justice.

[8]. Petitioners remained proclaimed offenders from 2016 to 2019. Now they are in custody since 28.06.2019. The case is triable by the Magistrate. Only one prosecution witness has been examined so far and the cross-examination of PW 1 was deferred as the prosecution wanted to file an application under

Section 319 Cr.P.C. The filing of application under Section 319 Cr.P.C and decision thereof, would give rise to some more time for commencement of the trial in accordance with law. In such situation, bail can be granted to the petitioners on stringent condition in order to ward off any apprehension of the prosecution that the petitioners may flee from justice.

[9]. In ***Sanjay Chandra Vs. CBI, 2011(4) RCR (Criminal) 898***, the Hon'ble Apex Court has held that when an under-trial is detained in custody to an indefinite period even in an economic offence, it would be violative of Article 21 of the Constitution of India.

[10]. At this stage, without forming any opinion on merits of the case, petitioners are directed to be released on regular bail on their furnishing adequate bail/surety bonds to the satisfaction of the trial Court. Petitioners shall surrender their passports (if any) before the trial Court.

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

04.02.2020 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No