

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 44287 of 2019
Date of Decision: 18.2.2020**

Ravi

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vikas Lochab, Advocate
for the petitioner.

Mr. Rahul Mohan, DAG, Haryana.

HARNARESH SINGH GILL, J. (ORAL)

The petitioner seeks regular bail in FIR No. 686 dated 31.12.2018 under Sections 202, 379, 406, 411, 419, 420, 467, 468, 471, 120-B IPC and Sections 66-C and 66-D of I.T. Act, 2000 registered at Police Station Ganaur, Sonipat, District Sonipat.

The allegations against the petitioner are that he along with other co-accused had committed theft of data of ATM cards of other persons at the time when the ATM cards were presented for payment at CNG Pump Larsauli and thereafter, prepared duplicate ATM cards and used the same to withdraw money from the bank accounts of several persons.

Learned counsel for the petitioner has argued that in the present case, charges were framed on 26.4.2019 and the case was adjourned for prosecution evidence for 24.5.2019 but till today trial is pending. He has relied on the provisions of Section 437(6) Cr.P.C.

It is further argued that in the case of non-bailable offences,

when the trial is not concluded within 60 days from the first date of taking evidence, such person shall be released on bail to the satisfaction of the Magistrate. Learned counsel for the petitioner has relied upon the judgments of this Court in '*Amit Sharma versus State of Haryana 2015(2) RCR (Criminal) 311*' and '*Vinod Kumar versus State of Haryana, Criminal Miscellaneous (M) No. 29702 of 2018 decided on 19.12.2018*'.

It has been argued by the learned State counsel that after the framing of charge on 26.4.2019 the case was adjourned to 24.5.2019 for prosecution evidence but on 24.5.2019 summons issued to the prosecution witnesses were received back unserved and as such, the case was adjourned to 6.6.2019 for prosecution evidence. On 6.6.2019, no witness was present and the case was adjourned to 20.6.2019 for rehnimai of the accused in custody and on 20.6.2019, accused were produced before the Duty Magistrate and the case was adjourned to 4.7.2019 but on 4.7.2019 accused Ravi (petitioner), Manish and Surender @ Sunio were not produced by the jail authorities and their production warrants were issued for 18.7.2019. On 18.7.2019 accused persons including the petitioner, were produced in Court and the case was adjourned for 1.8.2019 and on 1.8.2019 only one prosecution witness was present and examined, and the summons were ordered to be issued to the unserved witnesses for 28.8.2019. Again on 28.8.2019, accused Manish and Surender @ Sunio were not produced by the jail authorities and their production warrants were issued for 11.9.2019 and the prosecution witnesses were ordered to be summoned for 23.9.2019 and PWs Vikas Kaushik, Narender and Inspector Dalbir Singh were summoned throughailable warrants. On 23.9.2019, exemption from personal appearance of accused Amit was sought and one witness Parveen was

present who was examined and the case was adjourned to 3.10.2019 for remaining prosecution evidence. On 3.10.2019, no PW was present and the case was adjourned to 30.10.2019. No witness was present on the adjourned date and the case was adjourned to 27.11.2019. On the said date, accused Amit absented himself from Court and his bail was cancelled and non-bailable warrants were issued against him for 11.12.2019. On 4.1.2020, PW Rajesh was examined and the case was adjourned to 1.2.2020 and because of this reason, evidence could not be recorded within 60 days. Learned State Court has relied on ***Mukesh Kumar Ravishankar Dave versus State of Gujarat, 2011 (6) RCR (Criminal) 2650, Riza Abdul Razak Zunzunia versus State of Gujarat, (2009) Cri.LJ 4766, Gulab Singh Banjare and others versus State of Chhattisgarh, 2011(6) RCR (Criminal) 966 and Atul Bagga versus State of Chhattisgarh, (2010) CrLJ 508*** to contend that Sub Section 6 of Section 437 Cr.P.C. is not a mandatory provision.

At this stage, the provisions of Section 437(6) Cr.P.C. are reproduced hereunder:-

“If, in any case triable by a Magistrate, the trial of a person accused of any non- bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.”

Moreover, following FIRs are registered against the petitioner:-

- (i) *FIR No. 634 dated 4.12.2019 under Sections 379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station Ganaur, Sonipat.*
- (ii) *FIR No. 637 dated 6.12.2019 under Sections*

379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station Ganaur, Sonipat.

(iii) FIR No. 647 dated 8.12.2019 under Sections 379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station Ganaur, Sonipat.

(iv) FIR No. 686 dated 12.12.2019 under Sections 379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station Ganaur, Sonipat.

(v) FIR No. 964 dated 13.12.2018 under Sections 379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station City, Sonipat.

(vi) FIR No. 965 dated 14.12.2018 under Sections 379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station City, Sonipat.

(vii) FIR No. 972 dated 15.12.2018 under Sections 379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station City, Sonipat.

(viii) FIR No. 9 dated 03.12.2018 under Sections 379/420/406/419/467/468/471/120-B/202/411 IPC and Sections 66-C/66-D of IT Act, registered at Police Station Women, Sonipat.

Learned Additional Sessions Judge Sonapat while deciding the bail application of the petitioner on 10.9.2019 (Annexure P-3) has also considered the criminal antecedents of the petitioner.

The explanation regarding the delay has been given by the prosecution agency and as per Section 437(6) Cr.P.C., it is the satisfaction

13.8.2019 (Annexure P-2).

Keeping in view the criminal antecedents of the petitioner indicating as many as 08 other FIRs against him, coupled with the reasons recorded by the trial Magistrate as regards delay in conclusion of the trial, no ground for grant of regular bail to the petitioner is made out.

The petition is dismissed.

(HARNARESH SINGH GILL)
JUDGE

February 18, 2020
Gurpreet

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