205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CRM-M-46908-2019(O&M)
Date of decision: 05.08.2020

KAPIL SHARMA ...PETITIONER

VERSUS

STATE OF HARYANA ...RESPONDENT

2) CRM-M-9508-2020(O&M)

KAPIL SHARMA ...PETITIONER

VERSUS

STATE OF HARYANA ...RESPONDENT

<u>CORAM: HON'BLE MR. JUSTICE VIVEK PURI</u>

Present: Mr. S.K.Kaushik, Advocate
for the petitioner(s).

Ms. Gaganpreet Kaur, AAG, Haryana.

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(The case has been taken up through video conferencing on account of Covid-19 Pandemic).

<u>VIVEK PURI,J. (ORAL)</u>

Through instant petition, the petitioner is seeking regular bail in case FIR No. 723 dated 01.08.2017 under Sections 406/420 IPC, registered at Police Station City Hisar, District Hisar and FIR No. 294 dated 09.04.2016, under Sections 406/420/35/119/120-B/166/166-A/177/187/188/217/218/219/421/423/425/426/463/464/465/466/467/468/471/477-A/174-A IPC , registered at Police Station City Hisar, District Hisar.

Briefly, the allegations in the aforesaid two FIRs are to the effect that Ashish alongwith his father floated Societies and induced the investors to deposit the amount with an assurance to repay the amount with half yearly compounded interest @ 12% to 15%. Many people had invested the amount, the father of Ashish co-accused expired the year 2009 and thereafter the petitioner and Barkha, the co-accused were joined in the business.

The custody certificate has been placed on record which indicates that the petitioner is confined in jail since 02.07.2019 i.e. for a period of more than 01 years and 01 month.

It has been contended by the learned counsel for the petitioners that the charge under Sections 406/420 read with Section 34 IPC have been framed in the FIR bearing No. 723 dated 01.08.2017, whereas the charge under Sections 406/418 and 420 IPC has been framed in the case bearing FIR No. 294 dated 09.04.2016. The allegations in both the cases are substantially similar. The petitioner was not associated with the affairs of the Societies at the time of its inception. The petitioner Kapil Sharma and co-accused Barkha were joined subsequently after the expiry of the father of Ashish. The Societies were floated way back in the year 1979 and 1980 and the petitioner was joined therein after a period of more than 30 years. Though, Ashish, co-accused is stated to be at large but Barkha co-accused has already been released on bail in both the cases.

In the case bearing FIR No. 294 dated 09.04.2016, the officers/officials of Registrar Cooperative Society have also been arrayed as an accused. The special investigation team has been constituted and the matter is being investigated qua them. It has been further pointed out that the earlier bail application of the petitioner-Kapil Sharma in the case bearing FIR No. 294 dated 09.04.2016 was dismissed by this Court vide order dated 15.11.2019 and a period of about 09 months has elapsed since then.

Learned State counsel has not disputed the aforesaid factual aspect of the matter but has argued that there are allegations with regard to misappropriation of the amount to the tune of Rs. 50 Crores in both the cases.

In the instant case, the petitioner-Kapil Sharma has been joined the affairs of the Society after a period of 30 years from the date of inception. The co-accused namely, Barkha is on bail. The charge under Sections 406/420/418 read with Section 34 IPC is stated to have been framed against the petitioner. The offences are triable by the Court of Judicial Magistrate 1st Class. The petitioner-Kapil Sharma is in custody for a period of more than one year. The conclusion of trial is likely to take sometime particularly on account of restricted functioning of Courts due to Covid-19 Pandemic and furthermore no fruitful purpose will be served by detaining the petitioner in custody.

In order dated 15.11.2019 passed by this Court, the bail had been declined on the score that the amount to the tune of Rs. 10 Crores had been swindled, the petitioner-Kapil Sharma has purchased the property in his name and the name of his mother and father, beyond his discourse sources of income and was declared proclaimed offender and remained absconder for a period of more than one year.

In this regard, it may be mentioned here that on a query, the learned State counsel has stated that the allegations with regard to the purchase of the property in the name of the parents are based on the disclosure statement made by the accused. Furthermore, the petitioner has suffered sufficient incarceration on account of his having been declared proclaimed offender and absconding for a period of more than one year. Besides, a period of more than about 08 months has elapsed from the date of dismissal of the earlier bail application and the trial is not showing progress on account of restricted functioning of the Courts due to Covid-19 Pandemic.

For the aforesaid reasons, without making any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petitions are allowed.

05.08.2020 **(VIVEK PURI)**
renubala **JUDGE**

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