

CRM-M-2907-2021 (O&M)
Date of Decision : 02.09.2021

Musmat @ Guddu @ Mahi

...Petitioner

Versus

State of Haryana

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Devinder Kumar, Advocate for the petitioner.

Mr. Pawan Longia, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during the pendency of the trial in case FIR No.230 dated 20.07.2020 registered under Sections 384, 387, 120-B, 419, 420 of IPC, 1985 at Police Station Sector-31 Faridabad, District Faridabad, Haryana.

3. Learned counsel contends that the petitioner has been implicated in a false case, she is in custody since 21.07.2020, has a three years' old daughter and there is no female in the family to look after her, investigation in the case is complete, challan has been presented, there are more than 18 prosecution witnesses, charged are yet to be framed, therefore, no useful purpose would be served by keeping the petitioner

behind bars as the trial is likely to take considerable time to conclude.

Learned counsel relies upon the decision of Hon'ble the Supreme Court in **Sanjay Chandra vs. CBI 2011 (4) RCR (Criminal) 898.**

Relevant extract of the decision in Sanjay Chandra's case (supra) is reproduced as under:-

“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 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.”

4. Learned DAG, Haryana, on the other hand contends that the petitioner is the main accused and that the money paid to the petitioner i.e. Rs.6,000/- was recovered from her. Learned State counsel, however, does not dispute that the petitioner is in custody since 31.07.2020, that she is having a 3 year old daughter, challan has been presented, there are 18 prosecution witnesses and that charges are yet to be framed.

5. I have considered the submission of learned counsel for the parties.

6. As per the prosecution case, the petitioner dishonestly induced the complainant into a relationship and on 12.07.2020 offered herself to meet and have illicit physical relations with the complainant in a hotel and later on, on 13.07.2020 blackmailed the complainant through one Parveen Sharma who introduced himself as a Sub Inspector of Haryana police and who informed the complainant that a case had been registered against him by a girl alleging sexual assault and on the basis of the same, tried to extract Rs.15 lacs from the complainant, whereupon, the complainant informed the police and a trap was laid in which the petitioner along with other accused were arrested receiving money.

7. After taking into account all aspects of the matter especially that the petitioner is a woman, in custody since 21.07.2021, offences

alleged against the petitioner are triable by magistrate, maximum

punishment is seven years, she has a three year old daughter and there is no other female in the family to look after the said child, investigation is complete, challan has been presented though charges are yet to be framed, there are 18 prosecution witnesses and conclusion of trial would take considerable period of time, no useful purpose would be served by keeping the petitioner in custody, but without commenting on the merits of the case, the petition for regular bail is **allowed** and the petitioner is ordered to be released on regular bail, during the pendency of the trial subject to her furnishing bail / surety bonds to the satisfaction of the learned CJM / Trial Court / Duty Magistrate, concerned, provided she is not required in any other case. It is further made clear that the petitioner shall remain present on each and every date before the learned trial Court and will also not tamper with the evidence nor try to influence the prosecution witnesses. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

8. Petition allowed in the aforementioned terms.

02.09.2021

renu-rajesh

(B.S. Walia)

Judge

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