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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-5693-2021

Date of Decision: 22.03.2021

Manish

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Vinod Ghai, Senior Advocate, assisted by
Ms. Kanika Ahuja, Advocate,
for the petitioner.

Mr. Anmol Malik, D.A.G., Haryana.

Mr. Ashwani, Advocate, and
Mr. Varun Sharma, Advocate,
for the complainant.

SUDIP AHLUWALIA J. (ORAL)

This is a petition filed under Section 439 of the Code of Criminal Procedure by the petitioner, seeking regular bail in case FIR No.179, dated 22.10.2020, under Sections 408, 420, 467, 468, 471 and 120-B of the IPC, 1860 and Section 66-D of the Information Technology Act, 2008, registered at Police Station Cyber Crime, Gurugram.

2. The petitioner has remained in detention for almost five months, since 24.10.2020. After completion of investigation, Challan against him has already been submitted.

3. The petitioner's bail prayer is opposed on behalf of the State as well as the complainant by contending that the amount of money

defrauded/wrongfully gained by the petitioner's Company is huge to the tune of about ₹15,40,00,000/- (Rupees Fifteen Crores and Forty Lacs Only).

As such, the petitioner is not entitled to be released on bail at this stage.

4. From his side, Ld. Senior Counsel for the petitioner has relied upon the decision of the Ld. Apex Court passed in **Criminal Appeal No.2178 of 2011** titled as “**Sanjay Chandra Vs. CBI**”, decided on **23.11.2011**, in which it was observed, *inter alia*:

“14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive or preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the

question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”

5. The accused person in the said case was thereafter permitted to be released on bail by the Ld. Apex Court after further observing that:

“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 V. Raneef MANU/SC/0001/2011 : (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 that 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.”

6. The position now is that charges against the petitioner have already been framed, but evidence from the prosecution side is yet to commence. Although, 44 witnesses have been cited in the Challan.

7. Further detention of the petitioner in the given circumstances for an indefinite period at this stage is not called for. As such, relying upon the ratio of the decision in ***Sanjay Chandra's case*** (*supra*), at this stage the petitioner is permitted to be released on bail on similar terms as directed by the Ld. Apex Court in the said case, i.e. on his executing bail bond with two solvent sureties, each in a sum of ₹5,00,000/- (Rupees Five Lacs Only) to the satisfaction of Ld. Trial Court/Duty Magistrate concerned and also the following conditions:

- a. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts or the case so as to dissuade him to disclose such facts to the Court or to any other authority.
- b. He shall remain present before the Court on the dates fixed for hearing of the case. If he wants to remain absent, then he shall take prior permission of the Court and in case of unavoidable circumstances for remaining absent, he shall immediately give intimation to the appropriate Court and also to the Superintendent concerned and request that he may be permitted to be present through the Counsel.
- c. He will not dispute his identity as the accused in

the case.

d. He shall surrender his Passport, if any (if not already surrendered), and in case, he is not a holder of the same, he shall swear to an Affidavit. If he has already surrendered before the Ld. Trial Court/Duty Magistrate concerned, that fact should also be supported by an Affidavit.

8. Disposed off.

22.03.2021

Apurva

(SUDIP AHLUWALIA)
JUDGE

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