203

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.15199 of 2021
Date of Decision : 28.04.2021

Nitin Sharma

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. R.S. Cheema, Senior Advocate assisted by
Mr. Vaibhav Narang, Advocate
for the Petitioner.

Mr. Karan Sharma, Asstt. Advocate General, Haryana
for the Respondent/State assisted by
Inspector Jasveer Singh.

Mr. R.S. Rai, Senior Advocate assisted by
Mr. Shaurya Sharma, Advocate and
Mr. Abhinav Sood, Advocate
for the Complainant.

SUDIP AHLUWALIA, J. (ORAL)

The instant Petition has been filed under Section 439 of the Code of Criminal Procedure seeking Regular Bail on behalf of the Petitioner in case FIR No.0179, dated 22nd October, 2020, registered under Sections 406, 420, 467, 468, 471 read with Section 120-B of the Indian Penal Code, 1860 and Section 66-D of the Information Technology (Amendment) Act, 2008 at Cyber Crime Police Station Gurugram, District Gurugram.

2. The Petitioner has remained in detention for almost five months since 24th October, 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 lost by the Complainant-Company is huge to the tune of about Rs.19,81,42,530/- (Rupees Nineteen Crores Eighty One Lacs Forty Two Thousand Five Hundred and Thirty only). As such, the Petitioner is not entitled to be released on bail at this stage.

4. In addition, Ld. Counsel appearing for the Complainant has submitted that the Petitioner is the real brain behind the frauds and forgeries which resulted in loss of the aforesaid amount to the Complainant-Company as he was employed with the said Complainant-Company and was promoted as Process Capabilities Manager from 15th June 2015 and was also holding the post of Business Planning Manager and was entrusted with the most essential and conventional documents/information of the Complainant-Company which involved the disbursal of the repaid amount to the Company's eligible Partners, Distributors and Rsellers. It has been further contended that an amount to the tune of Rs.19,81,42,530/- had been illegally approved and overdrawn on the basis of forged E-mails created by the Petitioner and had been paid to non-eligible resellers namely M/s Atlantis Enterprises and J.T. Solutions, in collusion with M/s Reena S., another employee of the Complainant-Company, and that the Anticipatory Bail Application filed on behalf of the accomplice of the Petitioner namely Aakash Chaturbhuj Chhabaria had already been dismissed by this Court on 7th January, 2021 in CRM-M No.43388 of 2020, after which the said

accomplice instead of approaching the Supreme Court, again applied for Anticipatory Bail which has been again dismissed by the Ld. Court below.

5. From his side, however, Ld. Senior Counsel for the Petitioner has contended that his Client is not placed on the same footing as Co-accused namely Aakash Chaturbhuj Chhabaria since he is now seeking Regular Bail under Section 439 of the Cr.P.C., whereas the said co-accused is reported to have failed to secure any relief by way of Anticipatory Bail without having been actually arrested.

6. Ld. Senior Counsel has further drawn attention to the order passed by this Court in CRM-M No.5693 of 2021 on 22nd March, 2021 vide which co-accused namely Manish was granted Regular Bail by this Court after he had remained in detention from the same date as the present Petitioner, in view of the fact that Challan against him had already been submitted after completion of investigation, and therefore relying upon the decision of the Apex Court passed in **Criminal Appeal No.2178 of 2011** titled as '**Sanjay Chandra Vs. C.B.I.'**, decided on 23rd November, 2011, the said co-accused was permitted to be released on bail by quoting the following extracts from the aforesaid Judgment of the Apex Court :-

> *"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."

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 ally the apprehension expressed by CBI."*

7. Charges against the present Petitioner have also already been framed in the case but the evidence from the Prosecution side is yet to commence although 44 witnesses were cited in the original Challan.

8. It has been further highlighted by Ld. Senior Counsel that first date for prosecution evidence fixed in the Ld. Trial Court was 1st of March, 2021 after which it was adjourned to 15th March and thereafter 22nd April and now to the 5th of May without examination of any witness from the Prosecution side. As such, according to Ld. Senior Counsel even the statutory provision of Section 437(6) of the Cr.P.C. has become applicable

inasmuch as the trial what to talk of concluding, has not even commenced within the prescribed period of 60 days from the first date of taking evidence.

9. For the aforesaid reasons, this Court is of the opinion that further detention of the Petitioner, in the given circumstances, is not called for at this stage, in view of the legal position expounded by the Apex Court in the case of ***Sanjay Chandra (supra)*** that notwithstanding the magnitude of the economic offences allegedly committed by an accused who is as yet not convicted, refusal of bail in the circumstances would be improper *as a mark of disapproval of a formal conduct to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson*.

10. Consequently, the present Petitioner is now ordered to be released on bail on identical terms, as ordered by this Court in case of co-accused namely Munish in CRM-M No.5693 of 2021 i.e. on his executing bail bond with two solvent sureties, each in a sum of Rs.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.

11. Disposed off.

April 28, 2021 **(SUDIP AHLUWALIA)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No