

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

**CRM-M-16419-2021
Date of decision: 05.08.2021**

Ankur MoudgillPetitioner

Versus

U.T. ChandigarhRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. A.P. Kaushal, Advocate
for the petitioner.

Mr. Ashu Mohan Punchhi, Public Prosecutor with
Mr. Anupam Bansal, Addl. Public Prosecutor
for the respondent-U.T., Chandigarh.

Mr. Rajesh Garg, Sr. Advocate with
Mr. Kashish Garg, Advocate
for the complainant.

ARUN KUMAR TYAGI, J.

(The case has been taken up for hearing through video conferencing.)

1. The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No. 70 dated 29.07.2020 registered under Sections 408, 420 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station North, Chandigarh to which Sections 467, 468, 471 and 473 of the IPC were added later on.

2. Sh. Sushil Singla, Managing Director of M/s Supreme Securities Limited submitted written complaint to the Senior Superintendent of Police, Chandigarh against Vipin Kumar Dua, Regional Manager; Ankur Moudgill, Assistant Manager (the petitioner); Priya Sharma, Senior Executive and Sukhchain Singh, Field Executive - employees of M/s Supreme Securities Limited working in

its Sector 8-C Branch. In the complaint, it has been inter-alia alleged that all the above said four accused persons were responsible for the day to day business of the branch and to maintain the accounts books in due course of the business. Accused Nos.1 to 4 have misappropriated and embezzled amount of, at least, Rs.4,91,61,424/- which amount was in their possession as property of the Company as its employees/agents. The breakup of the amount of Rs.4,91,61,424/- is (i) Rs.91,97,400/- as foreign currency given to Ashu Forex + (ii) Rs.13,71,750/- outstanding in the books of Ashu Forex + (iii) Rs.20,43,880/- as foreign currency given to Jupiter Forex (net amount receivable as per books of accounts of the company from Jupiter Forex being Rs.20,41,700/-) + (iv) Rs.80,30,692/- withdrawn from ICICI Bank Account + (v) Rs.2,78,07,425/- equivalent to foreign currencies + (vi) Rs.6,96,616/- available as cash in the Branch + (vii) Rs.15,841/- withdrawn from Kotak Mahindra Bank. The complainant accordingly requested for registration of FIR against them under the appropriate penal provisions of law and recovery of the embezzled/misappropriated amount. The police investigated the case and arrested the petitioner on 03.03.2021. On completion of investigation, the police filed charge-sheet against him.

3. The petitioner being in custody has filed the present petition for grant of regular bail.

4. The petition has been opposed by the respondent-U.T., Chandigarh in terms of affidavit of Sukhraj Katewa, Deputy Superintendent of Police, Economic Offences Wing, Chandigarh.

5. The petition has also been opposed by the complainant.

However, no reply has been filed by the complainant.

6. I have heard learned Counsel for the petitioner, learned Public Prosecutor and Additional Public Prosecutor for U.T., Chandigarh and learned Senior Counsel for the complainant and gone through the relevant record.

7. Learned Counsel for the petitioner has argued that the petitioner was employed as Assistant Manager in the Sector 8-C Branch, Chandigarh of the complainant company M/s Supreme Securities Limited. The petitioner has been falsely implicated in the present case being an employee of the company otherwise he has nothing to do with the allegations made in the FIR. The petitioner is not dealing in any transfer of currency/foreign currency in any manner as the keys of the vault remain with co-accused Priya Sharma which fact can be verified from the keys movement register of the company. There is no allegation against the petitioner that he had ever dealt with the cash of the company or ever received or transferred any foreign currency or cash to anyone or had issued any receipt of the same to anyone. Allegation has been made against the petitioner that he had not visited the branch on 04.05.2020 but it was due to lock down and curfew in Punjab and Chandigarh. Co-accused Vipin Kumar Dua and Priya Sharma had admitted that they both have two keys which are necessary to open the safe vault meaning thereby that they are the only authorised persons to deal in currency and foreign currency and none else. Offences alleged are not made out against the petitioner. No recovery has been made from the petitioner. As per the case of the complainant, Vipin Kumar Dua, Regional Manager was responsible for

conduct of the business and was operating the bank accounts in the branch and was the main accused involved in the crime. Vipin Kumar Dua, Regional Manager has been granted regular bail by the Hon'ble Supreme Court vide order dated 01.07.2021. The petitioner is in custody since 03.03.2021. The petitioner is also entitled to grant of regular bail on parity with co-accused Vipin Kumar Dua. Charge-sheet has already been filed but the prosecution evidence of 49 prosecution witnesses is yet to be recorded. The trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by further detention of the petitioner in custody during trial. Therefore, the petitioner may be granted regular bail.

8. On the other hand, learned State Counsel and learned Senior Counsel for the complainant have argued that the petitioner was working as Assistant Manager in Sector 8-C, Chandigarh Branch of M/s Supreme securities Limited. Co-accused Vipin Kumar Dua, Regional Manager was authorised to operate the bank accounts of the company but all the four accused persons namely Vipin Kumar Dua, Regional Manager; Ankur Moudgill, Assistant Manager (the petitioner); Priya Sharma, Senior Executive and Sukhchain Singh, Field Executive were responsible for day to day business of the branch and to maintain the account books in the due course of the business. All the above said four accused in collusion and conspiracy with each other and with common intention embezzled the amount which has been found to be approximately Rs.5.50 crores. The Enforcement Directorate had seized foreign currency of the value of approximately Rs.10 lakhs

from the petitioner at the shop of M/s Buddhiraja, Sector-22, Chandigarh and the petitioner failed to produce any proper document for possession of the same and was fined Rs.20,000/- vide order dated 29.06.2020. This fact was never reported by the petitioner to the complainant which shows his involvement in illegal sale and purchase of foreign currency. In view of involvement of the petitioner in subject offences which fall in the category of economic offences, the petitioner is not entitled to grant of regular bail. Co-accused Vipin Kumar Dua has claimed his limited role in the entire matter and has attributed the criminality to the petitioner and other co-accused. The petition filed by co-accused Vipin Kumar Dua for grant of regular bail was dismissed by this Court vide detailed reasoned order dated 09.02.2021. Hon'ble Supreme Court granted bail to co-accused Vipin Kumar Dua in view of long period of his custody but did not discuss the merits and did not set aside the reasoned order passed by this Court on merits. The case of the petitioner stands on a different footing and the petitioner is not entitled to grant of regular bail on the ground of parity with co-accused Vipin Kumar Dua. In view of the nature of accusation and gravity of offences, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

9. Now, it is well settled that the object of detention during investigation and trial is not punishment but to secure presence of the accused during investigation and trial. Bail is the rule and committal to jail is an exception as held in ***Gurbaksh Singh Sibbia and others Vs. State of Punjab : 1980(2) SCC 565***. Accused is presumed to be innocent till proved to be guilty. Detention in custody may be a cause of

great hardship to the accused as he may, besides being subjected to the psychological and physical deprivations of jail life, lose his job, be prevented from contributing to the preparation of his defence and burden of his detention may fall heavily on the innocent numbers of his family as held by Hon'ble Supreme Court in ***Moti Ram Vs. State of M.P. : (1978) 4 SCC 47.***

10. While considering the question of grant of bail, the Court has to keep in mind (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of tampering with evidence and intimidating witnesses; (viii) danger of course of justice being thwarted by grant of bail (see ***State of U.P. Vs. Amarmani Tripathi : (2005)8 SCC 21; Sanjay Chandra Vs. CBI : 2012(1) SCC 40*** and ***Bhadresh Bipinbhai Sheth Vs. State of Gujarat and another : 2016(1) SCC 152***); (ix) seriousness of the offence (see ***Criminal Appeal No. 320 of 2021 (Arising out of SLP (Criminal) No. 2545 of 2020 titled Naveen Singh Vs. State of Uttar Pradesh and another decided on 15.03.2021)***); and (x) whether offences fall in the category of socio-economic offences (see ***State of Bihar and another Vs. Amit Kumar @ Bachaha Rai : 2017 (13) SCC 751*** and ***Rohit Tandon Vs. Directorate of Enforcement : 2018(11) SCC 46***).

11. However, there is another dimension to the matter of

consideration of grant of bail. In **Malimath Committee Report** (March 2003), it was observed:-

"6.7.1 Historically speaking, Criminal Justice System seems to exist to protect the power, the privilege and the values of the elite sections in society. The way crimes are defined and the system is administered demonstrate that there is an element of truth in the above perception even in modern times. However, over the years the dominant function of criminal justice is projected to be protecting all citizens from harm to either their person or property, the assumption being that it is the primary duty of a State under rule of law. The State does this by depriving individuals of the power to take law into their own hands and using its power to satisfy the sense of revenge through appropriate sanctions. The State (and society), it was argued, is itself the victim when a citizen commits a crime and thereby questions its norms and authority. In the process of this transformation of torts to crimes, the focus of attention of the system shifted from the real victim who suffered the injury (as a result of the failure of the state) to the offender and how he is dealt with by the State. Criminal Justice came to comprehend all about crime, the criminal, the way he is dealt with, the process of proving his guilt and the ultimate punishment given to him. The civil law was supposed to take care of the monetary and other losses suffered by the victim. Victims were marginalized and the state stood forth as the victim to prosecute and punish the accused.

6.7.2 What happens to the right of victim to get justice to the harm suffered? Well, he can be satisfied if the state successfully gets the criminal punished to death, a prison sentence or fine. How does he get justice if the State does not succeed in so doing? Can he ask the State to compensate him for the injury? In principle, that should be the logical consequence in such a situation; but the State which makes the law absolves itself.

6.8.1 The principle of compensating victims of crime has for long been recognised by the law though it is recognised more as a token relief rather than part of a punishment or substantial remedy. When the sentence of fine is imposed as the sole punishment or an additional punishment, the whole or part of it may be directed to be paid to the person having suffered loss or injury as per the discretion of the Court (Section 357 Cr.P.C.). Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.

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6.8.7 Sympathising with the plight of victims under

Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in Nilabati Behera v. State of Orissa, (1993 2 SCC 746) and in Chairman, Railway Board v. Chandrima Das are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for failure to protect the rights of the victim.

6.8.8 These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the state to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably."

12. **In Re: State of Assam & 2 Others (PIL (Suo Motu) No. 26/2013)** decided vide judgement dated 24.4.2013, a Division Bench of Gauhati High Court considered the question whether interim compensation can be ordered to be paid at the earliest to the victim irrespective of stage of enquiry or trial, either on application of the victim or suo motu by the Court. While referring to judgments of Hon'ble Supreme Court in **Savitri Vs. Govind Singh Rawat : 1986(1) RCR (Criminal) 83** and **Shail Kumari Devi Vs. Krishan Bhagwan Pathak : 2008(3) RCR (Criminal) 842** (in which the Magistrate was held to have the power to direct the payment of interim compensation under Section 125 of the Cr.P.C.) the Division Bench of Guahati High Court observed as under:-

“We are of the view that above observations support the submission that interim compensation ought to be paid at the earliest so that immediate need of victim can be met. For determining the amount of interim compensation, the Court may have regard to the facts and circumstances of individual cases including the nature of offence, loss suffered and the requirement of the victim. On an interim order being passed by the Court, the funds available with the District/State Legal Services Authorities may be disbursed to the victims in the manner directed by the Court, to be adjusted later in appropriate proceedings. If the funds already allotted get exhausted, the State may place further funds at the disposal of the Legal Services Authorities.”

13. In ***Suresh and another Vs. State of Haryana : 2015(1)***

R.C.R. (Criminal) 148, Hon'ble Supreme Court observed as under:-

“We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.....We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful.”

14. In view of these latest developments in the filed of victimology, the Investigating Officer is, besides making recoveries as may be possible, also required to collect evidence during investigation regarding liability of the accused to restitution of moveable/immovable

property illegally/fraudulently received or forcibly taken/occupied and also the financial resources/capabilities of the accused to pay compensation to the victim so that the Court can assess liability of the accused to restitution of such moveable/immovable property and his ability to pay interim/final compensation to the victim of the offence but due to lack of requisite training generally no such evidence is collected by the Investigating Officer in this regard during investigation.

15. In cases of embezzlement, fraudulently receiving/forcibly taking possession of moveable/immovable property, restitution to the victim of the benefit received/property taken away by the accused is an important aspect as the accused cannot be allowed to harvest/reap/retain fruits of his crime. Such restitution of the benefit illegally received/forcibly obtained by the accused to the victim constitutes an important aspect which cannot be ignored by the Court even at the time of consideration of the question of grant of bail particularly where the accused admits or there is prima facie unimpeachable documentary material/video footage etc. regarding the accused having received any such benefit and the accused does not furnish any reasonable explanation as to his legally enforceable entitlement to the same. It is now well settled that at the time of grant of bail the Court cannot impose any 'onerous condition' which may amount to virtual denial of grant of bail. For judicial precedents in this regard reference may be made to ***Deepak Chandratan Pareek Vs. Union of India through CBI (SC) : 2017(4) JT 487; 2017(5) Scale 412 : 2017 Cri. L.R. (SC) 443; Shyam Singh Vs. State through C.B.I.***

(SC) : 2006(9) SCC 169 and Runa Pasricha Rajpoot Vs. State of Haryana (PHHC) : 2019(2) R.C.R.(Criminal) 873. There is no dispute with the proposition of law that the Court cannot impose any onerous condition at the time of grant of bail but the question which arises is that if the accused admits or there is prima facie unimpeachable documentary material/video footage etc. regarding the accused having fraudulently/forcibly received a benefit from the victim and fails to show his legal entitlement to the same, then why even at the time of granting bail to the accused the Court cannot impose the condition of restitution of such benefit by the accused to the victim immediately or in such manner as may be agreed to by the victim. For example, if there is a video footage coming from authentic source as to snatching of mobile phone and vehicle of the victim by the accused and the police neglects, fails or is unable to recover the same will it not be just and proper that the Court imposes the condition of restitution of the same by the accused to the victim at the time of grant of bail or at the initial stage after taking cognizance? If the accused is granted bail and allowed to face and delay trial without such restitution on the ground that the Court can award compensation at the time of sentencing the accused after his conviction, will it not amount to allowing the accused to enjoy the fruits of his crime? Will not subjecting the complainant to wait till payment of compensation on final determination of guilt of the accused by final disposal of his appeal, which may take years or even decades, amount to illegally depriving the victim of his fundamental right to life and liberty and statutory right to property without any just and proper remedy at the appropriate time? I am of the considered view

that if the accused admits or there is prima facie unimpeachable documentary material/video footage etc. regarding the accused having fraudulently/forcibly received a benefit/property from the victim and the accused fails to show his legal entitlement to the same, then even at the time of granting bail to the accused the Court can impose the condition of restitution of such benefit/property by the accused to the victim immediately or in such manner as may be agreed to by the victim. In the very nature of things imposition of any such condition for such restitution of the benefit/property as aforesaid by the accused to victim cannot be said to fall in the category of 'impermissible onerous condition'.

16. It may be observed here that the jurisdiction now conferred on the Court to award compensation in criminal cases is by way of assumption of the powers of Civil Court to award compensation on liability under law of torts. Under order XXXVIII of the Code of Civil Procedure, 1908 the Civil Court has the power to call upon the defendant to furnish security for production of property and order attachment of such property before judgment if such security is not furnished. Section 53 of the Transfer of Property Act, 1882 makes every transfer of immovable property made with intent to defeat or delay the creditors of the transferor voidable at the option of any creditor so defeated or delayed. No doubt, in a case where the accused disputes the prosecution version, the question of grant of interim or final compensation by the Court will generally arise after taking of cognizance by the Court and not at the stage of consideration of the question of grant of bail to the accused and will also be dependent on

interim assessment on the basis of the material on record or final determination of the questions of guilt or innocence of the accused on the basis of evidence produced during trial, yet even in criminal cases the accused cannot be allowed to fraudulently transfer his properties to defeat or delay the rights of payment of compensation to the victim. Therefore, I am of the considered view that in appropriate cases if the facts and circumstances of the case so warrant even the Criminal Court can, at the time of considering the question of grant of bail to the accused, direct the accused to disclose his moveable and immovable properties/assets and also to submit an undertaking that he will not fraudulently transfer the same in order to defeat any order which may be passed by the Court for restitution/payment of interim/final compensation to the victim of the offence and imposition of any such condition will not fall in the category of 'impermissible onerous condition'.

17. In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioner, role attributed to the petitioner, period of his custody and **parity with co-accused Vipin Kumar Dua who has been granted regular bail by the Hon'ble Supreme Court vide order dated 01.07.2021** and also the fact that the trial, which involves examination of 49 prosecution witnesses besides witnesses to be examined by the accused in their defence, is likely to take long time particularly due to restrictions imposed to prevent spread of infection of Covid-19, but without commenting on the merits of the case, I am of the considered view that the petitioner deserves grant of regular bail subject to the condition of the petitioner furnishing

declaration of his immovable properties and also an undertaking that the petitioner will not transfer the same without obtaining permission from the Court.

18. In view of the above, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned and furnishing of declaration of his immovable properties and also an undertaking that the petitioner will not transfer the same without obtaining permission from the Court.

19. However, in case the declaration by the petitioner of his immovable properties is at any time found to be false in any material particular or the petitioner is found to have committed any breach of the undertaking given by him, not only the petitioner shall be liable to be proceeded against for contempt of Court but also his bail shall be liable to be cancelled on application to be filed in this regard.

05.08.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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