

CRM-M No.21023 of 2021 (O&M)

Date of Decision : 26.10.2021

Navdeep Singh Bains

...Petitioner

Versus

State of Punjab

....Respondent

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

Present : Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. C.L. Pawar, Sr. DAG, Punjab.

Mr. R.S. Bains, Senior Advocate *assisted by*
Ms. Aarushi Garg, Advocate
for the complainant.

B.S. Walia, J. (Oral)

[1] Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.7 dated 19.1.2017 registered under Sections 420, 465, 467, 471 & 120-B IPC at Police Station Mahilpur, District Hoshiarpur.

[2] Learned counsel contends that on identical allegations, private complaint (Annexure P-3) dated 31.05.2017 was instituted whereupon the petitioner was summoned by the learned Judicial Magistrate, 1st Class, Garhshankar vide order (Annexure P-4) dated 12.12.2017 and in the said complaint case, the petitioner was granted anticipatory bail by the learned Sessions Judge, Hoshiarpur vide order (Annexure P-5) dated 19.02.2018.

[3] Learned counsel further contends that the petitioner is in custody since 28.02.2021, investigation stands concluded, challan has been

presented, trial is likely to take considerable period of time, therefore, no useful purpose would be served by keeping the petitioner behind bars, especially as it is settled law that pre-trial incarceration is not warranted and amounts to punishment before establishing guilt for which he relies upon the decision of Hon'ble the Supreme Court in 'Sanjay Chandra versus CBI', 2012(1) SCC 40 and the decisions of this Court in 'Surinder Pal Singh versus State of Punjab', Law Finder Doc Id # 1761887 and 'Giri Raj versus State of Haryana', 2019(1) RCR (Criminal) 530.

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

- “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. ”

Likewise relevant extracts of the decisions in '**Surinder Pal Singh's** case (supra) and '**Giri Raj's** case (supra) read as under:-

In 'Surinder Pal Singh's case (supra)

“9. The aforesaid decision has also been quoted and accepted by the Supreme Court in case of '**Dipak Shubhashchandra Mehta Vs. C.B.I. and Anr.**' 2012(1) R.C.R. (Criminal) 870 and by this Court in '**Giri Raj Vs. State of Haryana**' 2019(1) R.C.R. (Criminal) 530 and '**Anil Kumar Vs. State of Punjab**' 2013(3) R.C.R. (Criminal) 854 as also by the Delhi High Court in '**Suresh Kalmadi Vs. CBI**' 2012(5) R.C.R. (Criminal) 556, in which it was observed –

“13. Thus the requirements that have to be balanced at this stage are the seriousness of the accusations, whether the witnesses are likely to be influenced by the Petitioners being enlarged on bail during trial and whether the accused are likely to flee from justice if released on bail. As stated earlier, prima facie a case for offence under Section 467 Indian Penal Code is made out, the punishment prescribed for which is up to life imprisonment. Thus, the accusations against the Petitioners are serious in nature. However, the evidence to prove accusations is primarily documentary in nature besides a few material witnesses. As held in *Sanjay Chandra* (supra) if seriousness of the offence on the basis of punishment provided is the only criteria, the Courts would not be balancing the Constitutional Rights but rather recalibrating the scales of justice.”

10. Similarly, in the case of '**Mahesh Kumar Vs. Central Bureau of Investigation**' 2014(8) R.C.R. (Criminal) 1650, the Delhi High Court after considering the ratio of the Apex Court's decisions in cases of *Sanjay Chandra* and *Dipak Shubhashchandra Mehta's* (Supra) granted bail to the accused

persons, who were similarly accused of economic offences under various Sections of P.C. Act inspite of having found that there was good material against them by observing inter-alia –

“40. Having perused the charge-sheet, prima facie it cannot be contended that the respondent/CBI has failed to make out a case of conspiracy for the offences punishable under Section 120B I.P.C. read with Sections 7, 8 and 12 of the PC Act. In any event, at this stage, the allegations levelled by the prosecution have to be taken on their face value. The Court must also ensure that there is no pre-judging and no prejudice is caused to either side, and the merits of the case must be left to be decided by the trial court [Ref: **Puran Etc. v. Rambilas & Anr. (2001) 6 SCC 338, Ram Govind Upadhyay v. Sudarshan Singh and Ors. (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr, 2004 (7) SCC 528].”**

In ‘Giri Raj’s case (supra)

15. ***The principles laid down by the Supreme Court in Gurcharan Singh and Others Vs. State (Delhi Administration) AIR 1978 Supreme Court 179 were followed by the Supreme Court in Miss Harsh Sawhney Vs. Union Territory reported in AIR 1978 SCC 1016 and in Mohan Singh Vs. Union Territory, Chandigarh. In Mohan Singh Vs. Union Territory, Chandigarh, reported in AIR 1978 Supreme Court 1095, even though the counsel for the State argued that the corruption of which the accused was prima facie guilty was substantial, the Supreme Court held that it was not sufficient reason to refuse bail. In paragraph 2 of the said judgment the Supreme Court held thus:-***

the corruption of which the appellant was guilty prima facie according to the results of the investigation) was substantial. Let us assume so. Even then refusal of bail is not an indirect process of punishing an accused person before he is convicted. This is a confusion regarding the rationale of bail. This Court has explained the real basis of bail law in Gurcharan Singh Vs. State (Delhi Administration) AIR 1978 SC 179; (1978 Crl. L.J. 129).

19. *It has also been held in various judgment of Hon'ble the Apex Court as well as of this Court that criminal prosecution is not a proceeding for recovery of the dues of the investors but is meant for punishing the guilty. In case of economic offences, the object of criminal prosecution is to protect the investors and help them in recovery of the money. It can be a presumption but the detention of accused in the jail would not aid the recovery. It has also been held that the purpose is not to recover the amount but to punish the accused persons. ”*

[4] Learned State Counsel, as well as learned Senior Counsel assisted by Ms. Aarushi Garg, Advocate do not dispute the fact that the petitioner is in custody since 28.02.2021 and that investigation stands concluded and challan has been presented nor have they disputed the law laid down in the aforementioned decisions. No other point has been argued by either side.

[5] I have considered the submissions of learned counsel for the parties.

[6] FIR was registered at the instance of the petitioners paternal Uncle, complainant-Balbir Singh on the allegation that land measuring 1

kanal and 8 marlas belonging to his son namely Kulwinder Singh had been sold by Jaspreet Singh by impersonating Kulwinder Singh vide sale deed dated 27.12.2013 to which sale deed the petitioner was also a signatory as co-owner despite the fact that the complainant's son was in the United Kingdom at that point of time. Allegation against the petitioner is that as co-owner, he had appeared at the time of execution of the impugned sale deed and was aware that the land of the son of the complainant was being sold by Jaspreet Singh by impersonation as Jaspreet Singh is the nephew of the petitioner.

[7] No doubt, the charges against the petitioner are serious, however, without commenting upon the merits of the case and taking into account the sole point raised by learned counsel for the petitioner that the petitioner is in custody since 28.02.2021 i.e. for a period of 08 months, petitioner was released on anticipatory bail in the criminal complaint on identical allegations between the same parties, investigation is complete, challan has been presented, therefore, presence of the petitioner in custody is not required for further investigation and that in the circumstances, further detention of the petitioner in prison would not serve any purpose, the present petition for regular bail is allowed and the petitioner is ordered to be released on regular bail during the trial of the case, subject to the petitioner executing a bond with two solvent sureties each in the sum of Rs.1 lakh to the satisfaction of the learned Illaqa Magistrate / trial Court on the following conditions:-

- (i) 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 to any other Authority.

- (ii) The petitioner shall remain present before the Court on each and every date fixed for hearing of the case and if he cannot be present on any particular date, he shall take prior permission of the Court and in case of unavoidable circumstances for remaining absent, he shall immediately give intimation to the Court with a request for permission to be present through counsel.
- (iii) The petitioner will not dispute his identity as accused in the case.
- (iv) The petitioner shall surrender his passport, if any, (if not already surrendered) and in case he is not a holder of the same, he shall swear an affidavit to the above effect and in case he has already surrendered the passport before the learned trial Court, the said fact should also be supported by an affidavit.
- (v) Liberty granted to the respondent to make an application for modification/recall of order passed by this Court if for any reason, the petitioner violates any of the condition imposed by this Court.

[8] Petition *allowed* in the aforementioned terms.

[9] However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

26.10.2021
'Rajneesh/GSV'

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