

CRM-M No.28426 of 2021  
Date of decision: 26.08.2021

Neelam .... Petitioner

Versus

State of Haryana .... Respondent

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

Present : Mr. Preetinder Singh Ahluwalia, Advocate and  
Mr. ShauryaPuri, Advocate  
for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Harayana.

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**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 439Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.198 dated 22.06.2021 registered under Sections 3, 4 & 5, Medical Termination of Pregnancy Act, 1971, Section 15 of the Environment Protection Act, 1986 read with Rules 3, 4, 5 & 7, Bio Medical Waste Management Rules, 2016 and Section 420 IPC.

3. Learned counsel contends that the petitioner has been implicated in a false case on extraneous considerations. No case under Section 420 IPC is made out, representation was submitted to the higher police authorities along with CCTV footage *prima facie* pointing to the false implication of the petitioner, that petitioner is in judicial custody

likely to take considerable period of time, therefore, no useful purpose would be served by keeping the petitioner behind bars, especially during the prevalence of the pandemic, besides petitioner is a permanent resident of Jhajjar, there is no apprehension of the petitioner tampering with the prosecution evidence, therefore, the petitioner be granted regular bail, especially since all the offences which are alleged against the petitioner are punishable maximum with imprisonment upto 07 years and all the offences are triable by a learned Magistrate.

4. Learned counsel relies upon the judgment of Hon'ble the Supreme Court in '*Sanjay Chandra vs. CBI, 2012 (1) SCC 40*' as reiterated by Hon'ble the Supreme Court in '*Dipak Shubhashchandra Mehta vs. CBI, 2012 (4) SCC 134*', as also decision of '*Arnesh Kumar vs. State of Bihar, 2014 (8) SCC 273*' case. Relevant extract of the aforementioned decisions is reproduced as under:-

**SANJAY CHANDRA VS. CBI's case**

*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. v. State, AIR 1978 Supreme Court 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.*

*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 jeopardise 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.*

**Dipak Shubashchandra Mehta Vs. CBI's case**

18. *The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted. Considering the present scenario and there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31.03.2010, except the period of interim bail, i.e. from 15.09.2011 to 30.11.2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the under trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. As posed in the Sanjay Chandra's case (supra) we are also asking the same question i.e. whether the speedy trial is possible in the present case for the reasons mentioned above.*

19. *As observed earlier, we are conscious of the fact that the present appellant along with the others are charged with economic offences of huge magnitude. At the same time, we cannot lose sight of the fact that though the Investigating Agency has completed the investigation and submitted the*

**charge sheet including additional charge sheet, the fact remains that the necessary charges have not been framed, therefore, the presence of the appellant in custody may not be necessary for further investigation.** In view of the same, considering the health condition as supported by the documents including the certificate of the Medical Officer, Central Jail Dispensary, we are of the view that the appellant is entitled to an order of bail pending trial on stringent conditions in order to safe guard the interest of the CBI.

**In Re : Contagion of Covid 19 Virus In Prisons**

In Re covid 19, guidelines laid down in **Arnesh Kumar 2014 (8) SCC 273** were held to be mandatory in nature. The relevant guidelines are being reproduced below:

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily **and Magistrate do not authorise detention casually and mechanically.** In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

**11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its**

**satisfaction, the Magistrate will authorise detention;**

*11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

*11.6. Notice of appearance in terms of Section 41A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

*11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*

**11.8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.**

**12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.**

5. Learned counsel by relying upon the aforementioned decision in '*Arnesh Kumar's* case (supra) contends that in the absence of any reasons having been given by the learned Magistrate, while granting the judicial remand, the detention of the petitioner is illegal and the petitioner is entitled to be forthwith released on bail.

*Pawan* confirms that pursuant to the arrest of the petitioner on 22.06.2021, the investigation has been completed, Challan has been presented, Offences with which the petitioner is charged are punishable maximum with imprisonment upto 07 years, Trial of all the offences is to be by way of magisterial trial.

7. Despite query, learned State Counsel has also not pointed out any reason having been recorded by the learned Magistrate, while granting judicial remand of the petitioner.

8. Taking into account the position as noted in the preceding part of this order but without commenting upon the merits of the case, I am of the considered view that no useful purpose would be served by keeping the petitioner in custody, as the trial is likely to take considerable period of time to conclude. Besides no apprehension has been expressed of the petitioner fleeing and not making herself available to face trial or of tampering with evidence.

9. Accordingly, the petition under Section 439 Cr.P.C. is *allowed*. Petitioner-Neelam is ordered to be released on regular bail during the pendency of the trial on her furnishing bail bond and surety bond to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, provided she is not required in any other case. Petitioner shall also comply with the conditions contained in Section 437(3) Cr.P.C. The petitioner shall also make herself available and be present before the learned trial court on every date. However, nothing stated hereinabove shall be read as an expression of opinion on the merits of the case.

10. Needless to mention, in case the petitioner is involved in any other case during the period while she is on regular bail in the instant case,

or does not make herself available to face trial, the prosecution would be at liberty to take out appropriate proceedings for cancellation of bail granted to the petitioner in the instant case.

11.               Petition disposed of in the aforementioned terms.

26.08.2021

*'Rajneesh/Amit'*

(B.S. Walia)

Judge

Whether speaking/reasoned: Yes/No.

Whether reportable :               Yes/No.