

CRM-M-45922-2019 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRM-M-45922-2019 (O&M).
Decided on: January 21, 2021.**

Tarlochan Singh

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Jasbeer Singh Dadwal, Advocate,
for the petitioner.**

Mr.Luvinder Sofat, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

Through Video Conference

The present petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.175 dated 4.11.2018, under Section 409 IPC, registered at Police Station Bhogpur, District Jalandhar Rural.

As per the FIR, Managing Committee of the Panchranga Cooperative Agri. Multipurpose Society Limited, passed a resolution dated

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11.10.2018, that the petitioner who was absent from Society from 30.8.2018 to 8.9.2018, came present on 7.9.2018 to 8.9.2018 and assured the Society that he would continuously remain present. But from 9.9.2018, till date he was continuously absent and it was brought to the notice by the members/secured creditors that the petitioner had issued receipts regarding periodical investments to the members/non-members of the Society and therefore, the Managing Committee of the Society suspended him. The almirah and godown were opened in the presence of his relatives and in the godown of the Society no manure was found and in the meantime, the Assistant Registrar of Cooperative Societies, Jalandhar marked the complainant and other inspectors for verification of accounts. During investigation, it was found that for the last 4-5 years receipts have been issued but no credit has been made in the cash book/day book. On 7.9.2018 and 8.9.2018, petitioner was present and after making cuttings in the record, he had shown investments of some of the members in their accounts for their satisfaction. Thereafter, detail of the amounts has been mentioned in the FIR and total Rs.1,69,98,140.86 has been shown to be embezzled by the petitioner.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and one sided inquiry was conducted and after passage of one year, the proceedings of arbitration as provided under the Cooperative Societies Act, have been initiated against the petitioner. He submitted that amount so mentioned in the FIR has never been ascertained by any authority and for that purpose the

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process can be accomplished only by way of arbitration proceedings and on the basis of mere allegations, the petitioner cannot be burdened with the amount and the amount was not matching with the account books because number of other employees were also there in the Society. He submitted that affidavit has been filed by the DSP in the present case in which now the amount which has been mentioned was Rs.80,02,737/- + Rs.2,95,869/- which is much less than the amount which has been stated in the FIR and this would further corroborate his argument that without ascertaining of the amount, the petitioner cannot be fastened with any liability.

He has further submitted that investigation of the present case was completed long time ago and the challan has been presented on 15.2.2019 and the charges were framed way back on 13.6.2019 but till date no prosecution witness has been examined and rather two of the witnesses who were bound down by the Court did not appear subsequently. By referring to the provisions of Section 437 (6) Cr.P.C., the learned counsel for the petitioner has referred to the interlocutory orders which were passed by the learned trial Court after framing of the charges which have been placed on record in the present case. A perusal of the same would show that on 13.6.2019, the charges under Section 409 IPC were framed against the petitioner. On 11.7.2019, no PW was present and summons were issued to the unserved and unexamined prosecution witnesses. On 25.7.2019, the case was adjourned by the trial Court and again on 8.8.2019, the case was adjourned and on 18.9.2019, bailable warrants of PW.1 were issued and summons were issued to PWs at Sr.Nos.2 to 8. On 31.10.2019, two PWs

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were present but they requested for an adjournment and they were bound down for the next date. On 14.11.2019, again the aforesaid 2 PWs were present but they requested for an adjournment again and were bound down for the next date. Thereafter on 28.11.2019, these two PWs were not present despite being bound down and therefore,ailable warrants were issued. Thereafter, the matter was again adjourned for three different dates and thereafter, again on 16.3.2020, it was directed that summons to PWs at Sr. No.1 to 3, be issued.

Learned counsel for the petitioner has submitted that despite repeated opportunities given to the PWs number of times, they did not come present and despite being bound by the Court, they did not come present and thereafter due to breakdown of Covid – 19 Pandemic the trial could not proceed. The learned counsel has submitted that the petitioner is in custody for the last 2 years, 1 month and 6 days as on 12.1.2021. He further submitted that the present case is a case triable by the Magistrate and in the present case, the entire record is with the police and there is no likelihood that in case the petitioner is released on bail then he may tamper with any evidence or influence any witness. He further submitted that the petitioner was granted interim bail for six weeks and he had surrendered himself.

Learned counsel for the petitioner has further submitted that unless the amount is ascertained by any authority, the petitioner cannot be held liable for the payment of the same as he was only an employee of the Society and in case there was any misappropriation then he alone cannot

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be fastened with the liability. He further submitted that the Society has otherwise also initiated arbitration proceedings against the petitioner under the provisions of Cooperative Societies Act which would determine as to whether any amount was embezzled and to what extent.

He submitted that on the report of Audit body, the petitioner cannot be kept in custody for an indefinite period and he has already been in custody for the last more than 2 years and he has, therefore, prayed for the grant of regular bail to the petitioner.

On the other hand, learned State counsel has submitted that the matter involved embezzlement of huge amount of money and the matter being serious in nature, the petitioner be not granted the concession of regular bail. However, learned State counsel has not disputed the custody period of the petitioner and he has also not disputed that the charges were framed on 13.6.2019 and till date no prosecution witness has been examined despite the fact that two of them were bound down by the Court. The learned State counsel has also not disputed that the investigation of the case is complete. He has, however, pointed out that one another case under Section 138 of the Negotiable Instruments Act, is pending against the petitioner.

I have heard the learned counsel for the parties.

The custody period of petitioner which is more than two years is not disputed. So far as pendency of another case under Section 138 of the Negotiable Instruments Act against the petitioner is concerned, the same cannot become a ground for denial of regular bail to the petitioner.

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The facts and circumstances of the present case are to be seen at the time of consideration of grant of regular bail to the petitioner. A perusal of the interlocutory orders which have been placed on record by the learned counsel for the petitioner, would show that the charges were framed way back on 13.6.2019 and despite grant of number of opportunities to the prosecution, no prosecution witness has been examined till date despite the fact that two of the prosecution witnesses were bound down twice but they did not turn up and therefore, bailable warrants were issued against them. Apart from this, the allegations are based on an audit report and the proceedings initiated by the cooperative Society against the petitioner are still pending and there has been no ascertainment of amount under the arbitration proceedings.

Be that as it may, long custody of the petitioner and the fact that despite repeated adjournments no prosecution witness has been examined since long, can become a determinative factor for consideration of grant of regular bail to the petitioner. Furthermore, it is not the case of the State that in case the petitioner is released on bail then he may tamper with any evidence or he may influence any of the witness particularly in view of the fact that the petitioner was granted interim bail for six weeks and he had surrendered in time as per the learned counsel for the petitioner.

Therefore, considering the totality of the circumstances of the present case, I deem it fit and appropriate to allow the present petition. It is ordered that the petitioner shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the concerned trial

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Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

January 21, 2021.
raj arora

JASGURPREET SINGH PURI)
JUDGE

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