

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

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CRM-M-7093-2021 (O&M)

Date of Decision: 07.04.2022

ANVINASH KUMAR JHA

.... Petitioner

Versus

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vinod Ghai, Senior Advocate with
Ms. Mahima Dogra, Advocate, for the petitioner.

Mr. Surender Singh, AAG Haryana.

HARNARESH SINGH GILL, J.(Oral)

Through this 3rd petition, the petitioner seeks regular bail in case bearing FIR No.25 dated 26.04.2019, registered under Section 420 IPC; Section 66-D of the Information and Technology Act, 2000 and Sections 120-B, 204, 467, 471 IPC (added later on) at Police Station Cyber Crime, District Gurugram.

On 17.09.2021, learned counsel for the petitioner had sought time to place on record some documents. However, the same have not been placed on record till date despite having availed number of opportunities.

Today, learned Senior counsel for the petitioner submits that the petitioner does not intend to place on record any further document.

As per the contents of the FIR, the allegation against the petitioner is that he is one of the Directors of Company, namely, Policybazaar Insurance Wb Aggregator Pvt. Ltd. (Policybazaar/Our Company); that the business of the said Company was carried out through online portal i.e. www.policybazaar.com; that, as per law, an

insurance policy can be issued only by an Insurance Company, registered with the IRDAI and the Policybazaar was acting as an intermediary under the statutory and regulatory framework in India. However, few individuals/unknown persons were financially defrauding under the guise of them being representatives of the policybazaar.

Learned Senior counsel appearing for the petitioner submits that on a complaint filed by the authorized representative of the Company, the petitioner was arrested on 10.06.2019 and recovery of Rs.75,500/-, one mobile phone, one laptop and some other documents, was effected from him and that the petitioner has been in custody for the last more than 2 years and 10 months. He further submits that co-accused, namely, Radhey Shyam Lodhika and Mahender, have already been granted the concession of regular bail by this Court vide orders dated 18.09.2020 and 27.02.2020, respectively. He further submits that the offences are triable by Magistrate and long incarceration of the petitioner is not justified.

It is further submitted that when the investigation is already complete and nothing is to be recovered from the accused, he cannot be kept in custody for an indefinite period, particularly, when there are bleak chances of the trial being concluded any time soon. In support of his contentions, he relies upon the judgment passed by the Hon'ble Supreme Court in Sanjay Chandra vs. CBI, 2011 (4) RCR (Criminal) 898. Emphasis is placed on paras 25 to 29 of the aforesaid judgment, which read as under:-

“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. Vs. State AIR 1978 SC 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.

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 Vs. Raneef (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 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.

29) In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the learned counsel for the parties and the case laws relied on in support of their respective contentions. We clarify that we have not expressed any opinion regarding the other legal issues canvassed by learned counsel for the parties.”

Per contra, while opposing the prayer for grant of regular bail to the petitioner, learned State counsel does not dispute the custody period of the petitioner. He, however, submits that the petitioner along with co-accused, namely, Neeraj Kumar Gupta, had conspired with each other and used the name of Policybazaar for defrauding the clients of Policybazaar; that forged call centre, forged documents and fake mobile numbers were being used to make calls to the general public and thus, many people have been duped of their hard earned money, making them believe that they had been investing in the Insurance Policies. He further submits that there are total 83 prosecution witnesses, out of whom only

one has been examined, thus far.

I have heard the learned counsel for the parties.

The petitioner has been in custody since 10.06.2019. Offences are triable by the Magistrate. Co-accused have already been enlarged on bail. Most of the prosecution witnesses are yet to be examined. In such circumstances, the trial of the case would take a long time to conclude. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

In view of the above and without commenting anything on the merits of the case, lest it should prejudice the case of both the sides, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds in the sum of Rs.2,00,000/- with two solvent sureties of the like amount, to the satisfaction of the learned Chief Judicial Magistrate/trial Court/Duty Magistrate concerned. The petitioner shall not directly or indirectly make any inducement to any person acquainted with the facts of the case; the petitioner shall remain present on each and every date before the learned Court concerned and can only remain absent with the prior permission of such Court.

However, it is made clear that, in case the petitioner violates the terms and conditions of this order, the State would be at liberty to move an appropriate application for modification/recalling of this order.

07.04.2022

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

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