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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.9970 of 2022 (O&M)

Date of decision: 05.07.2022

Sanjeev Dua

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. N.S. Sidhu, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.0859 dated 01.12.2018, for offence punishable under Sections 120-B, 419, 420, 467, 468, 471 of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station Gurugram Sadar, District Gurugram.

The earlier one was dismissed as withdrawn on 13.10.2020.

Counsel for the petitioner has argued that the new ground for filing this petition is that the petitioner is in long custody as well as the fact that the co-accused Ram Kumar, has been granted the concession of regular bail, by passing the following order:-

“The above FIR was registered on the basis of a complaint given by complainant Bhagat Thakran, wherein it was mentioned that he was known to Ram Kumar (petitioner), who had introduced Ashok Kumar Monga,

Gaurav Monga (co-accused) and Usha Monga to the complainant. As per the allegations, Ashok Kumar Monga told the complainant that he was owner of plot No.50 measuring 429 sq.yards, situated at DLF Colony, Kutub Enclave Complex, Siwana Nathupur, District Gurugram on the basis of sale deed No.8841 dated 18.01.1994. Ram Kumar conveyed to the complainant that Ashok Kumar Monga and his daughter were in need of financial help of approximately to Rs.1.15 crores and they were ready to mortgage the said property in his (complainant) favour. An agreement dated 19.02.2016 was executed between the parties and Ashok Kumar Monga had agreed to return the loan amount within eight months along with interest @ 4% per annum. The loan amount was advanced by complainant by way of two cheques amounting to Rs.35.00 lacs and Rs.15.00 lacs respectively, whereas a sum of Rs.65.00 lacs was given in cash. When the complainant demanded his money back, three cheques were issued by the accused, which had dishonoured. On these broad allegations, above FIR was registered for the offences of cheating and forgery.

Learned counsel for the petitioner contends that the agreement dated 19.02.2016 was executed between the complainant Bhagat Thakran and the borrowers, namely, Ashok Kumar Monga and Gaurav Monga. According to him, the said loan amount was returned by these two persons and Usha Monga by issuing the cheques, however, the same had dishonoured and three complaints under Section 138 Negotiable Instruments Act, 1881 are pending against Ashok Kumar Monga, Gaurav Monga and Usha Monga. It is argued that the petitioner had simply introduced the borrowers to the complainant and has been falsely implicated with the aid of criminal conspiracy punishable under Section 120-B IPC. He contends that the investigation of the case is complete and the charges were framed by the trial Court on 02.09.2019. He submits that out of total 23 witnesses, only one witness has been examined so far. He prays for grant of bail to the petitioner.

On the other hand, learned State counsel assisted by ASI Rakesh, has opposed the prayer on the ground that the petitioner was instrumental in commission of the offences. According to learned State counsel, one other co-accused, namely, Sanjeev Dua had impersonated as Ashok Kumar Monga and further got opened an account in his (Ashok

Kumar Monga) name in Punjab National Bank, bearing account No.1467000109117267. It is further pointed out that a sum of Rs.13.00 lacs was paid to the petitioner, which was withdrawn from this account. However, it is not disputed by him that the investigation of the case is complete and the prosecution has examined only one witness so far.

At this stage, learned counsel for the petitioner contends that the amount of Rs.13.00 lacs was received by the petitioner as a brokerage being a property dealer. According to him, petitioner has no role in getting the bank account opened in the name of Ashok Kumar Monga. It is further contended that as far as the identity of Gaurav Monga s/o Ashok Kumar Monga is concerned, the same is not in dispute and a common agreement was executed by father and son with the complainant. He submits that the petitioner deserves the concession of bail as trial will take long time.

After hearing the learned counsel for the parties and considering the above background of the case, this Court is of the opinion that the offences are triable by Magistrate and the trial is likely to consume considerable time in view of the outbreak of global pandemic, namely, COVID-19 in the region and State Governments and District Administration have imposed various restrictions to curb its spread, therefore, further custody of petitioner may not be justified.”

Counsel for the petitioner has argued that the custody of the petitioner, as on today, is 03 year, 03 months and 15 days and the trial is not proceeding as in the intervening period, 02 of the co-accused namely Gaurav Monga and Charanjot were declared as proclaimed offenders and thereafter, the challan was presented against them. It is further submitted that on the basis of the affidavit of the Assistant Commissioner of Police, Sadar Gurugram has not disputed this fact that the co-accused namely Gaurav Monga and Charanjot were declared as proclaimed offenders on 01.04.2021 and thereafter, the challan against them as proclaimed offenders was presented in the Court on

01.04.2022.

Counsel for the State submits that as per the investigation, the role of the petitioner is that he impersonated himself as real Ashok Monga and executed a GPA in favour of another accused Gaurav Monga son of Ashok Monga, who further mortgaged the same with the complainant Bhagat Singh Thakran by preparing the forged documents and obtained an amount of Rs.1.15 crores. Counsel for the State has further submitted that in that process, the petitioner received an amount of Rs.90,000/- as a commission.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 03 years, 03 months and 15 days; the co-accused of the petitioner namely Ram Kumar is already released on bail; the offences are triable by the Court of Magistrate; the custodial interrogation of the petitioner is not required and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

05.07.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No