

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20700-2022 (O&M)
Date of Decision: 20.12.2022

(I)

Ram Lal Chaudhary

....Petitioner(s)

Versus

State of U.T, Chandigarh

.....Respondent(s)

CRM-M-44253-2022 (O&M)

(II)

Amit Kumar @ Ammu

....Petitioner(s)

Versus

State of U.T, Chandigarh

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vinod Ghai, Senior Advocate assisted by
Ms.. Kanika Ahuja, Advocate and
Ms. Kirti Ahuja, Advocate,
for the petitioner in CRM-M-20700-2022.

Mr. Keshav Pratap Singh, Advocate,
for the petitioner in CRM-M-44253-2022.

Mr. Rajeev Anand, Addl. PP, U.T, Chandigarh.

Mr. P.S. Sullar, Advocate, for the complainant.

JASGURPREET SINGH PURI, J. (Oral)

Both petitions are taken up together for final disposal with the
consent of learned counsel for the parties since the prayer in both the petitions

pertain to the grant of regular bail and they arise out of the same FIR.

Both petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.177 dated 11.11.2021, under Sections 420, 120-B IPC, registered at Police Station Sector-34, Chandigarh.

Learned Senior Counsel appearing on behalf of the petitioner Ram Lal Chaudhary in CRM-M-20700 of 2022 has submitted that the petitioner is in custody from 11.11.2021, which is more than one year and one month and the investigation of the case has already been completed and thereafter, challan has been presented before the competent Court under Section 173 of the Code of Criminal Procedure. He submitted that the charges in the present case were framed on 14.09.2022 but no prosecution witness has been examined till date.

Learned counsel appearing on behalf of the petitioner namely Amit Kumar @ Ammu in CRM-M-44253 of 2022 has submitted that the petitioner is son of the other petitioner in CRM-M-20700-2022 namely Ram Lal Chaudhary and now he is in custody for about 7 months and 1 day but there is no specific role attributed to the petitioner.

Learned Senior Counsel submitted that as per the allegations, a complaint was filed by one Atulya Sharma by alleging that he had met the petitioner Ram Lal Chaudhary through one another person who was disciple of one guruji and he was given an investment opportunity and for that purpose the petitioner would require an amount of Rs.5 Crores and thereafter, the complainant had sold his own house and also collected the pensionary benefits including provident fund, gratuity and other savings and allegedly paid an amount of Rs.5 Crores in cash to the petitioner and the said

transaction of paying of aforesaid Rs. 5 Crores to the petitioner was done from the period of July, 2015 to January, 2016, as per the version of the complainant himself which is so incorporated in the FIR. The learned Senior Counsel submitted that a perusal of the FIR would show that the FIR has been registered for the purpose of recovery of an amount Rs.5 Crores which was allegedly paid in the years 2015 to 2016 which is apparent from a perusal of the FIR itself wherein a request was made by the complainant that the amount be recovered. He submitted that firstly, lodging of the FIR only for the purpose of recovery of amount would be an abuse of the process of law because the proper mode for the purpose of recovering any disputed amount, if any, is to file a suit for recovery, if any, and in accordance with law but in the present case even as per the prosecution and the complainant, an amount of Rs.5 Crores were advanced way back in the years 2015 to 2016 and the FIR was lodged in the year 2021 which is after a lapse of five years and the complainant did not file any suit for recovery etc. and now after the lapse of the period of limitation, the present FIR was lodged which is nothing but an abuse of the process of law. He further submitted that even otherwise also the allegations contained in the FIR are totally improbable. He submitted that as per the complainant, he collected money out of his pensionary benefits and selling of his house but the money was paid in cash to the petitioner and since it is not a probable prosecution story, the entire FIR is a concocted story.

The learned Senior Counsel for the petitioner in CRM-M-20700-2022 and the learned counsel for the petitioner in CRM-M-44253-2022 further submitted that be that as it may, the present is a case under

Sections 420 and 120-B IPC which is triable by Magistrate and the petitioner Ram Lal Chaudhary has already faced incarceration for more than one year and one month and the petitioner Amit Kumar @ Ammu has faced incarceration for more than seven months and now the trial is commenced by recording the statements of the prosecution witnesses and since the trial of the case may take long time, both the petitioners may be considered for the grant of regular bail. They further submitted that since it was a case of concocted story by the complainant, the complainant did not choose to appear before the learned trial Court for deposing despite the fact that five adjournments were granted after framing of charges for service of summons but the complainant is deliberately avoiding the service.

The learned Senior Counsel further submitted that although there are four other cases against the petitioner Ram Lal Choudhary pertaining to Section 420 IPC as well as Section 302 IPC but the same cannot become a ground for denial of bail to the petitioner in the present case because out of the aforesaid four cases, two cases under Section 420 IPC were registered after the registration of the present FIR while he was in custody and so far as the third case pertaining to Section 302 IPC is concerned, he is already on bail vide order dated 27.04.2015 and in the fourth case pertaining to Section 420/406 IPC again, he is on bail by the orders passed by the learned JMIC, Mohali on 10.08.2022.

Learned counsel for the petitioner Amit Kumar @ Ammu has submitted that so far as the petitioner is concerned, he is involved in one more case pertaining to Section 420 IPC which was also registered after the registration of the present FIR in which also he has been falsely implicated alongwith his father as aforesaid.

On the other hand, Mr. Rajeev Anand, learned Additional Public Prosecution, U.T, Chandigarh has submitted that it is correct that the petitioner Ram Lal Chaudhary is in custody from 11.11.2021, which is more than one year and one month and petitioner Amit Kumar @ Ammu is in custody for about 7 months and 1 day and it is also correct that the investigation of the case has been completed and the charges have been framed by the learned JMIC and the present is a case which is triable by Magistrate. He has however opposed the grant of bail to the petitioners especially petitioner Ram Lal Chaudhary on the ground that the petitioner is a habitual offender and is involved in four more cases out of which three are similar in nature wherein money was taken by him by defrauding the complainant. He submitted that considering the gravity of the offence the petitioners do not deserve the concession of regular bail.

Mr. P.S. Sullar, learned counsel appearing on behalf of the complainant has also opposed the grant of bail on the ground that the petitioners have committed a fraud upon the complainant and had taken Rs. 5 Crores from him on the pretext of making an investment but was never returned to him. He submitted that the offence under Section 420 IPC was complete because there was an element of deception even at the level of inception and therefore, it is not a case of a mere financial dispute between the parties.

I have heard the learned counsel for the parties.

The petitioner Ram Lal Chaudhary has incarceration for about one year and one month and petitioner Amit Kumar @ Ammu has faced incarceration for about 7 months and 1 day. The investigation of the case has been completed as per the learned counsel for the parties and thereafter, the charges have been framed and now the matter is fixed for prosecution evidence. As per the learned counsel for the parties, the matter was adjourned after the framing of the charges for 5-6 times for the purpose of summoning of the complainant. However, the complainant has not been examined till date. The present FIR is under Sections 420 and 120-B IPC and therefore, the case is triable by Magistrate. The allegations in the present FIR are pertaining to seeking recovery of Rs. 5 Crores which allegedly the complainant had paid to

the petitioners by way of cash. This Court does not wish to make any observations on the merits of the case but only for the purpose of considering the grant of regular bail, this Court can see that whether the amount of Rs. 5 Crores was given by way of cash or not can be ascertained only at the time of trial by way of adducing evidence. Once the investigation of the case has been completed and the trial has commenced, no useful purpose will be served in case the custody of the petitioners is continued. So far as the pendency of the other cases against the petitioners especially petitioner Ram Lal Chaudhary is concerned, out of four cases, two cases were registered after the lodging of the present FIR when the petitioner was already in custody. Although the antecedents of the accused is a relevant factor for the purpose of consideration of regular bail but the facts and circumstances of the instant case has to be seen in its totality especially the fact that the case is triable by Magistrate and the actual custody of the accused. In the present case, the pendency of the other FIRs against the petitioners cannot become a ground for denial of bail to the petitioners considering the totality and circumstances of the present case.

Therefore, considering the aforesaid factual position, this Court deems it fit and proper to grant regular bail to both the petitioners.

Consequently, both the petitions are allowed. Both the petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned, if not required in any other case.

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

20.12.2022

rakesh

Whether speaking
Whether reportable

**(JASGURPREET SINGH PURI)
JUDGE**

: Yes/No
: Yes/No