

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SR. No.207

CRM-M-21148-2022

Date of Decision:17.08.2022

Balwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Vikram Sharma, Advocate,
for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

N.S. SHEKHAWAT, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial in FIR No.26, dated 28.03.2020 under Sections 420/465/467/468/471 IPC registered at Police Station Sadar, Jalalabad (W), District Fazilka.

The above-said FIR was initially registered on the basis of complaint dated 06.11.2018 moved by four complainants namely Ravi Kumar son of Harbhajan Lal, Abhi Kamboj son of Har Narain, Baldev Chand son of Jai Chand and Baljinder Singh son of Lakhvir Singh, which was submitted to Inspector General of Police, Ferozepur Range. Broadly, the complainants alleged that they were educated, unemployed persons and were looking for job. Co-accused-Gurnam Singh was working in the Electricity Department and co-accused Sukhwinder Singh @ Bittu was running a cosmetic shop at village Ghubaya and were on the visiting terms with each other. They informed the complainants that

Balwinder Singh, who is an employee of Railway Department had good connections with the higher officials of Railway Department and could get them recruited in the Railway Department on government jobs. In the month of July 2017, the complainants along with Harbhajan Lal visited the house of Balwinder Singh-petitioner, where co-accused Jaswinder Singh was also present and they had gone there on the asking of Gurnam Singh and Sukhwinder, co-accused. Raj Kumar son of Hari Chand, co-accused, was also present and assured that one person would have to pay Rs.5,00,000/- and they will be appointed on government jobs. A sum of Rs.50,000/- was paid as token money at that time. Later on, the petitioner demanded more money and a sum of Rs.2,00,000/- was transferred in the account of Harbhajan Lal, co-accused. It is further alleged that later on certain more amounts were paid to different persons. Thereafter, forged papers for medical examination were issued and the complainants were assured that joining letters would be given shortly. Subsequently, forged joining letters were also issued to them. However, when the complainants could not get the jobs, the FIR in question was registered by them.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case due to some civil dispute with the complainant party. He has further submitted that the FIR in the instant case was registered on 28.03.2020, whereas, the petitioner has been falsely implicated in the present case after 21 months of the registration of FIR, only on the basis of alleged conversation between the petitioner and father of the complainant namely Harbhajan Lal. Learned counsel has referred to the enquiry report dated 26.12.2019 (P-3) to contend that a detailed report was submitted by Deputy Superintendent of Police, Sub-Division, Jalalabad to Senior Superintendent of Police, Fazilka, whereby the petitioner was declared innocent. He has extensively

referred to enquiry report (P-3) and submitted that the petitioner had already filed a civil case against Ravi Kumar etc. The petitioner had even given money to Raj Kumar, co-accused, for his appointment in the Railway Department. Raj Kumar, co-accused, had given two cheques amounting to Rs.9,00,000/- to the petitioner regarding the refund of said amount. However, when petitioner-Balwinder Singh presented the said cheques for encashment, the same were dishonoured. Consequently, the petitioner has filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 in the competent court of law. Learned counsel, while placing reliance on Annexure P-3, also submitted that Raj Kumar had taken the money from the complainant and in fact it was only Raj Kumar, co-accused, who had forged the joining letters of recruitment in favour of the complainant party in the Railway Department.

Learned counsel for the petitioner has further submitted that later on Raj Kumar, co-accused, colluded with the police and the Superintendent of Police (INVS), Fazilka, again conducted the enquiry and submitted his enquiry report on 02.11.2021, vide GD No.16 dated 30.12.2021, only on the basis of conversation between the petitioner and father of complainant-Harbhajan Lal, the petitioner has been falsely involved in the instant case. Learned counsel has also referred to an agreement to sell (P-5) and submitted that the complainant party has concocted a false story because civil dispute is pending between the parties. He further submitted that the petitioner himself is a victim at the hands of Raj Kumar, co-accused, who has cheated the petitioner also. Raj Kumar earlier assured the petitioner to get him job in the Railway Department and for that the petitioner had paid a huge amount to him. A forged joining letter was handed over to the petitioner and he was also paid the basic pay of Rs.15,800/- and a salary slip in this regard was annexed as Annexure P-6. When the petitioner confronted Raj

Kumar, co-accused, he issued two cheques amounting to Rs.3,00,000/- and Rs.6,00,000/-, the photocopies thereof are placed on record as Annexures P-7 and P-8, respectively. The cheques were presented for encashment by the petitioner, however, the same were dishonoured on account of **“Payment stopped by Drawer”**. Ultimately, the petitioner had to file the complaint (P-4) in the competent court of law at Jalalabad against Raj Kumar, co-accused. He has further submitted that the complainant party has made a false and concocted story, with ulterior motive to harass and humiliate the petitioner to pressurize him illegally. He has further submitted that the petitioner was arrested in the instant case on 27.02.2022 and is in custody for the last more than 5 ½ months. He further submitted that after completion of investigation, the challan has been presented in the instant case and the trial of the case may take long time. He further submitted that all the offences in the instant case are triable by the Court of Magistrate and further detention of the petitioner will serve no meaningful purpose.

Learned counsel for the State has vehemently opposed the grant of regular bail to the petitioner on the ground that he cheated the poor and innocent villagers on the pretext of getting them jobs in the Railway Department. Even serious allegations have been levelled against the petitioner and he had connived with the main accused Raj Kumar.

I have heard the learned counsel for the parties and minutely examined the case file.

At this stage, it is observed that the object of the bail is to secure the presence of the accused at the trial only. It is also observed that the object of bail is neither punitive nor preventive and deprivation of liberty must be considered a

punishment, unless it is required to ensure that an accused person will stand his trial when called upon. Hon'ble the Supreme Court has observed in catena of judgments that when a person is punished by denial of bail in respect of any matter upon which he has not been convicted it would be contrary to the concept of personal liberty enshrined in the Constitution except in cases where there is reason to believe that he may influence the witnesses. It is appropriate to say that pre-conviction detention should not be resorted to, except in cases of necessity to secure attendance at the trial or upon material that the accused will tamper with the witnesses if left at liberty.

Hon'ble the Supreme Court in **Gudikanti Narasimhulu and others v. Public Prosecutor, AIR 1978 SC 429** has held as under:-

"Bail or Jail"- at the pre-trial or post-conviction stage - largely hinged on judicial discretion. The learned Judge held that personal liberty was too precious a value of our constitutional system recognised under Article 21 that the crucial power to negate it was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. It was further held that deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution. The learned Judge quoted Lord Russel who had said that bail was not to be withheld as a punishment and that the requirements as to bail were merely to secure the attendance of the prisoner at trial. According to V.R. Krishna Iyer, J., the principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment. After holding that it makes sense to assume that a man on bail has a better chance to prepare and present his case than one remanded in custody the learned Judge observed that if public justice is to be promoted mechanical detention should be demoted.

In **Gurbaksh Singh Sibbia etc Vs The State of Punjab, AIR 1980**

SC 1632, Hon'ble the Supreme Court has observed as under:-

*“Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. The Court has also observed that in which case bail should be granted and in which case it should be refused is a matter of discretion. The court found it interesting to note that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra Vs. King Emperor, AIR 1924 Calcutta 476, that the object of bail was to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused was whether it was probable that the party would appear to take his trial and that it was indisputable that bail was not to be withheld as a punishment. The Supreme Court also referred to the observation of the Allahabad High Court in **K.N. Joglekar Vs. Emperor, AIR 1931 Allahabad 504**, that Section 498 of the Old Code which corresponds to Section 439 of the New Code, conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. The Allahabad High Court had also observed that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. The Supreme Court referred also the decision of the Allahabad High Court in **Emperor Vs. H.L. Hutchinson, AIR 1931 Allahabad 356**, wherein it was held that the principle to be deduced from the various sections in the Cr.P.C. was that grant of bail is the rule and refusal is the exception, that as a presumably innocent person, the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence and that an accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. The High Court had also held that it would be*

very unwise to make an attempt to lay down any particular rules which would bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes bail may be granted but not in other classes. The Supreme Court apparently approved the above views and observations and held (vide paragraph 30) as follows :

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

The legal position emerging from the above discussion can be summarised as follows :

“(a) Personal liberty is too precious a value of our Constitutional System recognised under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.

(b) As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.

(c) The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.

(d) Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.

(e) Judges have to consider applications for bail keeping passions and prejudices out of their decisions.

(f) In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437 (1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for Bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question

whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation etc. In view of so many variable factors the considerations which should weigh with the Court cannot be Exhaustively set out. However, the two paramount considerations are (i) the likelihood of the accused fleeing from justice, and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper weight should be bestowed on these two factors.

(j) While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favour of granting bail subject to sub-section 3 of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(k) If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.

(l) If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.

(m) The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.

(n) For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non-bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences.

(o) Law does not authorise or permit any discrimination between a foreign National and an Indian National in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions which are necessary to ensure that the accused will be

available for facing trial. It cannot be said that an accused will not be granted bail because he is a foreign national.”

In the instant case, the petitioner is in custody since 27.02.2022; investigation is complete in all respects and the challan has already been presented. The prosecution has failed to show that the accused/petitioner is in a position to influence the witnesses or may abscond from the process of law. The petitioner has no criminal antecedents and his further custody would serve no meaningful purpose.

Taking into consideration the totality of the facts and circumstances and without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on bail pending trial on his furnishing bail bonds and surety to the satisfaction of the concerned trial court/Duty Magistrate/Chief Judicial Magistrate.

17.08.2022
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO