

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

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CRM-M-26883-2022
Date of decision: 13.07.2022

OM PARKASH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Bhawesh Chaudhary, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case bearing FIR No. 158 dated 02.07.2001 registered under Sections 420, 406, 465, 468, 471 and 120-B of the Indian Penal Code, 1860 at Police Station Division No.6, now Bhargo Camp, District Jalandhar.

2. The gravamen as culled out from the story of the prosecution is that on 14.06.2001, Smt. Baksho d/o Atma Ram r/o Buta Mandi, Jalandhar, moved application addressed to Officer-in-Charge, Anti Fraud Staff, Jalandhar, that she is resident of above address. Her son Deepa is lodged in Central Jail, Jalandhar, in case under Section 460 of IPC. They want to engage a lawyer for which they talked to Mukhtiar Bhatti, who was known to them, Mukhtiar Bhatti had assured them that he will get the counsel engaged and get her son released on bail. Mukhtiar Bhatti brought her to Court complex and got engaged Sh. Ashok Gandhi as counsel. Mukhtiar Bhatti told her to make

arrangement of Rs. 50,000/- for getting her son released on bail. She and her daughter Reena told him that they have no money, then, Mukhtiar Bhatti told her that he will get arranged money for her on interest, if they mortgage their house. She brought her father Atma Ram in whose name the house is and Mukhtiar Bhatti took them to the house of Channu. After executing the documents, Channu gave them Rs. 1 lac and Rs. 50,000/- was kept by Mukhtiar Bhatti with him. He got executed an agreement worth Rs. 1,50,000/-. Thereafter, she met with the counsel and talked about the bail saying that Mukhtiar Bhatti has got their house mortgaged for sum of Rs. 1,50,000/- and Rs. 1 lac has been given to her and Rs. 50,000/- has been retained by Mukhtiar Bhatti for bail. Her counsel told that he has never demanded any money and asked her why she has taken money on interest. She cannot pay interest @ 5% and asked her to return the money and get the documents returned. Thereafter, they met Mukhtiar Bhatti and told him that they did not need money and to get the documents returned from Channu after returning the mortgaged amount. They alongwith Balwant Singh s/o Harnam Singh went to the house of Mukhtiar Bhatti for getting the documents and returning the money. They returned the money to Channu, who had torn and burnt the documents and told that their documents have been destroyed. Her daughter Reena cleverly took the torn and burnt pieces of the agreement and came to their house. The accused assured us that they need not to return the money as their account has been settled. But on 29.05.2001, Channu has sent notice through his counsel Sh. Mukhtiar Mohd in which he had alleged that she had taken loan of Rs. 2 lacs after mortgaging the house and

asked her to execute the sale deed on or before 11.06.2001. She had consulted with all the known persons, who have suggested that she had been cheated. She is a illiterate lady. Accused-Mukhtiar Bhatti, Channu, Om Parkash and Gulzari Ram have gotten her signatures on blank papers.

3. Learned counsel appearing on behalf of the petitioner contends that the petitioner is alleged to be an attesting witness to the Agreement to Sell and that co-accused of the petitioner namely Gulzari Ram and Mukhtiar Bhatti were tried by the Judicial Magistrate First Class, Jalandhar in Criminal case bearing No. 648/1 of 2006 and have already been acquitted vide judgment dated 03.02.2010. He contends that the petitioner was not aware about the proceedings having been initiated against him and was never served. Eventually, the petitioner was arrested on 04.02.2022 and a supplementary charge sheet has already been filed. Being a magisterial trial, it is likely to take a long time. It is contended that the prosecution had, in the trial against the said co-accused, examined only one witness namely Balwant Singh and the said witness had not supported the version of the prosecution and was thus declared hostile by the trial Court. The other eye witness Atma Ram was never examined by the prosecution despite availing numerous opportunities. He further submits that the petitioner has clean antecedents and is not suspected or convicted in any other case.

4. Per contra, Mr. Karanbir Singh, AAG, Punjab has submitted that the petitioner had absconded from the proceedings for a period of 16 years and was declared as a proclaimed person. It is however not disputed that the other co-accused already stand acquitted and that the

petitioner being attesting witness to the Agreement to Sell was the subject matter of the dispute in the said trial as well. He informs that the supplementary charge sheet has already been filed and charges have also been framed on 10.05.2022. No witness has been examined so far.

5. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their assistance.

6. Without examining the merits of the instant case and taking into consideration the circumstances noticed above, the role of the petitioner as well as the stage of the trial along with custody of more than 05 months in the present case, I deem it appropriate to enlarge the petitioner on bail to the satisfaction of the trial Court.

7. The instant petition is allowed and the petitioner is ordered to be released on bail on his furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

8. It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

9. The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 13, 2022
vishal sharma

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