

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

202

CRM-M-29231-2020 (O&M).

Date of Decision: 09.05.2022.

Kabir Lavee

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Sangram S. Saron, Advocate,
Ms. Shubreet Kaur, Advocate,
Ms. Kanika Ahuja, Advocate for petitioner.

Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana.

Mr. N.S. Shekhawat, Senior Advocate, with
Mr. Harsh Chopra, Advocate for complainant.

Lalit Batra, J.

This second petition under Section 439 Cr.P.C for grant of regular bail has been moved by petitioner-**Kabir Lavee** in case FIR No.512 dated 22.08.2019 under Sections 120-B, 406, 420, 467, 468 and 471 IPC, registered at Police Station DLF, District Gurugram.

Custody certificate dated 08.05.2022 filed by learned State counsel is taken on record.

Learned senior counsel for the petitioner *inter alia* contends that allegedly in October, 2016, petitioner being guarantor alongwith co-accused conspired to defraud complainant-Financier to advance loan of Rs.5,02,59,573/- favouring Samparsh Food Private Limited, whereas petitioner was not holding post of Director in Samparsh Food Private Limited and as such he was not beneficiary to the said loan transaction. He further urges that allegations levelled against the petitioner are totally

concocted, false and frivolous and there is no iota of truth therein. He further submits that petitioner was arrested in this case on 28.10.2019 and he remained in custody till 06.01.2021. He further urges that petitioner was released on interim bail by this Court, vide order dated 05.01.2021 and thereafter in pursuant to directions of this Court, he (petitioner) had surrendered before the jail authorities on 07.05.2022 and he is languishing in custody since then. He further submits that co-accused namely Sharwan Kumar Aggarwal, Chand Narayan Kuchroo and Vishwanathan Shankara Narayana have not been joined in the investigation till date as those persons being aged are suffering from multiple ailments. He further urges that co-accused Akshar Kuchroo has already moved petition (CRM-M-40059-2019) seeking pre-arrest bail and vide order dated 19.09.2019, his arrest was stayed by this Court. He further urges that co-accused Ritu Khullar was joined in the investigation on 01.10.2020 but later on during verification of facts, she was found innocent. He further submits that parents of petitioner are quite aged and they are suffering from multiple ailments. He further submits that in terms of medical record dated 14.04.2021, 11.10.2021, 06.01.2022, 13.01.2022 and 30.04.2022 (Annexures P-12 and A-4) of Sharwan Kumar Aggarwal, father of petitioner, reveals that said Sharwan Kumar Aggarwal is suffering from prostrate and hernia problems and had undergone surgery. He further submits that Mrs. Kaneez Narjis, mother of petitioner, is suffering from lymphoma (blood cancer), which is at fourth stage, and for treatment thereof, she is undergoing chemotherapy, as is evident from medical record dated 05.02.2022, 14.02.2022, 28.02.2022 and 30.04.2022 (Annexures P-13 and A-5). He further urges that except

ailing parents. He further submits that petitioner is no more required by Investigating Agency for further investigation as after completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented in the Court on 24.12.2019. He further submits that though FSL report dated 29.07.2020 has already been forwarded to quarter concerned on 01.08.2020 but till date trial of the case has not commenced. He further urges that even FSL report dated 29.07.2020, qua the signatures of petitioner states, "it has not been possible to express a definite opinion on the questioned signatures". He further urges that FSL report was prepared on 29.07.2020 i.e. after dismissal of previous petition of petitioner (CRM-M-2902-2020), vide order dated 17.04.2020. He further urges that offences in question are triable by Magistrate. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and, thus, in view of change in scenario, petitioner may be released on bail.

On the other hand, learned State counsel assisted by learned senior counsel for the complainant while opposing the cause of petitioner has vehemently argued that since previous petition (CRM-M-2902-2020) moved by the petitioner seeking regular bail was dismissed on merits by this Court, vide order dated 17.04.2020, no fresh ground is made out to extend the concession of bail to the petitioner. He further urges that Sharwan Kumar Aggarwal, father of the petitioner, is co-accused in this case and has been evading arrest, therefore, no benefit should be extended to petitioner on the purported health ground of co-accused who is absconding from the process of law. He further urges that since petitioner being guarantor as well

as son of co-accused Sharwan Kumar Aggarwal defrauded complainant-Financier to the tune of Rs.5,02,59,573/-, he does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Previous petition (CRM-M-2902-2020) of petitioner seeking regular bail was dismissed by this Court, vide order dated 17.04.2020. Petitioner remained in custody in this case w.e.f. 28.10.2019 to 06.01.2021 and at present he is languishing in custody since 07.05.2022. Though final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented against the petitioner in the Court on 24.12.2019 and even despite preparation of FSL report dated 29.07.2020, the trial of the case has not commenced as charges have not been framed till date, as is evident from contents of para No.11 of status report dated 26.04.2022 furnished at the instance of respondent-State. Offences in question are triable by Magistrate. Speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution of India.

Hon'ble Supreme Court in **Criminal Appeal No.1570 of 2021 (SLP (Crl.) No.7085 of 2021)** titled **Mahmood Kurdeya Vs. Narcotics Control Bureau**, vide order dated 07.12.2021, granted bail to accused in a case under NDPS Act highlighting therein that though charge sheet was filed on 23.09.2018 but the charges have not been framed nor trial has commenced.

Thus, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial, since there is change in scenario as even after dismissal of previous petition on 17.04.2020, though

FSL report dated 29.07.2020 has already been received from quarter concerned, the trial has not commenced. Since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Kabir Lavee** is allowed and he is ordered to be released on bail on his furnishing personal bond and surety bond to the satisfaction of Trial Court/Chief Judicial Magistrate/Duty Magistrate, Gurugram, as the case may be.

Since the main petition itself has been allowed, pending application(s), if any, also stand disposed of.

(LALIT BATRA)
JUDGE

09.05.2022

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No