

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

(Through Video Conferencing)

**CRM-M-42904-2021
Date of Decision : 13.01.2022**

Sukhchain Singh @ Chaini Petitioner

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Amarbir Singh Salar, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR bearing No.18 dated 29.01.2021, under Sections 420, 120-B of the Indian Penal Code, registered at Police Station Sadar Kotkapura, District Faridkot.

Learned counsel for the petitioner has submitted that the petitioner is in custody from 18.03.2021; the investigation of the case is already complete; the challan has been presented under Section 173 Cr.P.C. before the learned competent Court on 13.05.2021 and thereafter charges have been framed on 26.07.2021. He has submitted that it is a case where the allegations against the petitioner were that he alongwith some other co-

accused had taken some amount of money for conducting a committee and the same was not returned back to the complainant. Learned counsel for the petitioner has further submitted that the complainant alongwith some other complainants has falsely implicated the petitioner in the said FIR and at the most, it is a case of dispute of civil liability if any and since the petitioner has faced incarceration of more than 09 months, the investigation of the case is already complete and no recovery is to be effected from the petitioner, he may be considered for the grant of regular bail. Learned counsel for the petitioner has also submitted that other co-accused namely Harpreet Singh has been granted anticipatory bail by this Court in CRM-M-29195-2021 on 13.09.2021 vide Annexure P-9. Similarly, other co-accused namely Gurmeet Kaur has also been granted anticipatory bail vide Annexure P-7.

Learned State counsel has submitted that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that the investigation of the case is already complete and the challan has been presented and thereafter the charges have been framed on 26.07.2021. He has, however, submitted that it is a case where the petitioner has allegedly taken some amount for conducting a committee and thereafter he has not returned the amount and, therefore, the present FIR was lodged.

I have heard the learned counsel for the parties.

The custody period of the petitioner is not in dispute. It is also not in dispute that the investigation of the case is already complete; the challan has already been presented before the competent Court and thereafter charges have been framed. It is not the case of the State that some

recovery is to be effected from the petitioner. It is also not the case of the State that in case the petitioner is released on bail he may influence any witness or may tamper with the evidence or may flee from justice. The petitioner is facing incarceration from 18.03.2021 and the trial of the case may take long time. Therefore, this Court deems it fit to grant bail to the petitioner. Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds/surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Trial Court/Duty Magistrate.

Before parting with this judgment, it is necessary to mention with regard to the orders which have been passed by the learned Addl. Sessions Judge, Faridkot vide Annexure P-10. On 07.01.2022, it was pointed out to this Court that the petitioner was in custody from 18.03.2021 in the present FIR No.18 dated 29.01.2021 but the Addl. Sessions Judge, Faridkot vide Annexure P-10 decided the application for grant of anticipatory bail on merits on 02.07.2021 and, therefore, this Court had directed the District & Sessions Judge, Faridkot to file a report before this Court as to how anticipatory bail has been decided on merits when the petitioner was already in custody much prior to the same.

A report has been received from the District & Sessions Judge, Faridkot vide letter dated 11.01.2022. In its report, the learned District & Sessions Judge, Faridkot has stated that comments were called for from the concerned Addl. Sessions Judge in this regard. It has been stated in the report that the petitioner had infact filed a regular bail application under Section 439 Cr.P.C. in Sessions Court which was eventually entrusted to the

Court of Sh. Harbans Singh Lekhi, learned Addl. Sessions Judge, Faridkot for disposal and a perusal of the bail record would reveal that the bail application was filed for seeking regular bail and specific pleading has been made in para No. 13 of the bail application to the effect that the accused is in judicial custody in this case. The said bail application was decided vide order dated 02.07.2021 and the perusal of the same would show that the learned Addl. Sessions Judge, Faridkot has dismissed the bail application while considering the same as having been filed under Section 438 Cr.P.C. As per the comments received from the concerned Addl. Sessions Judge, Faridkot, he has stated that due to rush of work this mistake has occurred and he has also assured that such like mistake will not happen in future. However, at the concluding part of the report of learned District & Sessions Judge, Faridkot he has submitted before this Court that the comments submitted by the Officer (Addl. Sessions Judge, Faridkot) does not contain any legally justifiable reason in passing the order dated 02.07.2021.

A perusal of the order Annexure P-10 dated 02.07.2021 would show that the learned Addl. Sessions Judge, Faridkot has discussed the contentions of the parties considering the same to be as anticipatory bail application wherein the contentions have been noted in para Nos.4 and 5 and thereafter in the operative part again it has been observed that it was not a fit case for grant of pre arrest bail to the accused. A perusal of the order dated 02.07.2021 raises serious concern.

Therefore, this Court deems it fit and proper to send the case file to the concerned Administrative Judge of District Faridkot. The Registry of this Court is hereby directed to send the present case file to the

concerned Administrative Judge of District Faridkot forthwith for information and further necessary action, if so required, in accordance with law.

13.01.2022
mamta

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No