

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46948-2021
Date of Decision:26.05.2022

Shilpi Jindal

.....Petitioner

Versus

State of U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Barun Jaswal, Advocate
for the petitioner.

Mr. Amit Goyal, APP, U.T., Chandigarh.

JASJIT SINGH BEDI, J.(Oral)

The prayer in this petition under Section 439 Cr.P.C. is for the grant of regular bail in case FIR No.332 dated 04.09.2017 under Sections 406, 420, 34 IPC, 1860 and Sections 3 and 4 Prize Chits and Money Circulation Scheme (Banning) Act, 1978 registered with Police Station South 34, Chandigarh.

2. The brief facts of the case are that the complainant-Reny Kakkar got registered the FIR with the allegations that the petitioner and other persons were running different kitty groups for gold and diamond ornaments. They were also involved in trading of gold and diamond ornaments under the name and style of M/s Aditya Diamonds at Manimajra, Chandigarh. Kitty groups were started in the year 2013, whereunder a sum of Rs.2000/- to 5000/- per month was received from members for a period of 20 months. On maturity, gold and diamond

jewellery was to be delivered to kitty members. It went well till the year 2015 after which there were delays in delivering the jewellery but the prescription was regularly received by the petitioner. Thereafter, neither gold or diamond jewellery was delivered nor the amounts in question were refunded.

3. The learned counsel for the petitioner contends that a number of persons are aggrieved in the present case, though the FIR has been registered at the instance of Reny Kakkar. He states that one Ashish Bansal has effected a compromise with the petitioner and he is the witness, who has deposited a sum of Rs.78,01,666/- and therefore, the petitioner deserves the concession of regular bail, when the total alleged defalcated amount is Rs.1,00,45,000/-. He further contends that there are six other FIRs against the petitioner, in which she is on bail and since, she has been in custody since 27.09.2019, she ought to be granted the concession of regular bail in this case as well.

4. The Counsel for the State on the other hand contends that the antecedents of the petitioner do not entitle her to the grant of regular bail. She might have compromised the matter with one of the aggrieved persons but that by in itself does not mean anything when none of the other aggrieved persons have effected a settlement with her. He, thus contends that the petitioner does not deserves the concession of regular bail.

5. I have heard the counsel of both the sides at length.

6. On 06.05.2022, the counsel for the petitioner had stated that Mr. Ashish Bansal was willing to come to this Court and support the

case of the petitioner for the grant of bail and since he is the victim, who has deposited the chunk of the money to the tune of Rs.78,01,666/- out of the total defalcated amount of Rs.1,00,45,000/-, a settlement with him itself would entitle the petitioner to the grant of bail. Mr. Ashish Bansal who is present in Court today does not oppose the grant of bail to the petitioner. It may also be pointed out that the petitioner has been in custody since 27.07.2019 and only 02 out of the 18 prosecution witnesses have been examined till date.

7. While dealing with the issue of grant of bail to an accused/convict with criminal antecedents, the Courts have held as under:-

In Maulana Mohd. Amir Rashadi Versus State of U.P. and another, 2012(1) R.C.R. (Criminal) 586, the Hon'ble Supreme Court held as under:-

*“6.It is not in dispute and highlighted that the second respondent is a sitting member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As **observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”***

(Emphasis supplied)

In Rajender Singh Versus State of Haryana, CRM-40431-2021 in CRA-D-1640-DB-2014, decided on 19.01.2022, this Court held as under:-

“We are quite conscious of the fact that the applicant in the present case is a prior convict, and therefore, his case would be an exception to the ratio of the law laid down in Daler Singh’s case (supra). However, on having examined the factual matrix in the case of the applicant, we are inclined to suspend the rest of the sentence of the applicant for the following reasons:-

(i) The applicant has undergone approximately 09 years of his substantive sentence of 12 years i.e. 03 years more than the prescribed period under Daler Singh’s case (supra).

(ii) The applicant was convicted in FIR No. 244 dated 10.05.2006 in which he was sentenced for 02 years, and he has undergone the same. In the second conviction in FIR No. 84 dated 21.07.2006, the applicant was sentenced for 10 years and he has been granted bail vide order dated 03.12.2009. So, as on date, the applicant is in custody only in the present case.

(iii) If pendency of other FIRs is the only consideration for denial of bail, then whenever a convict/under- trial applies for bail, the same would be denied simply looking at the pendency of another case. While, it is true that the grant of bail/suspension of sentence would have to be looked at in the larger context of the criminal antecedents of the accused/convict, it is equally true that the appreciation of evidence in the trial/appeal would have to be with reference to the

evidence in that case alone and not with respect to the evidence in the other pending cases against him. Therefore, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions would put the accused in vicious loop of never being granted bail because the bail in each case would be denied due to the pendency of another case/conviction. This would clearly be violative of the right to speedy trial/expeditious disposal of an appeal as recognized under Article 21 of the Constitution of India, as the accused would never be granted bail in any case leading to indefinite periods of incarceration assuming of course that the appeal is not heard within a reasonable period of time.

(iv) The appeal, in the present case, which stands admitted on 14.11.2014, is not likely to be heard in the near future due to the COVID-19 pandemic, which does not show sign of abating.

In view of the aforesaid discussion, we are of the view that the applicant ought to be released on bail having undergone 08 years 11 months and 19 days of his substantive sentence of 12 years.”

(Emphasis supplied)

8. In view of the judgments in Maulana Mohd. Amir Rashadi's case (supra) and Rajender Singh's case (supra); the statement of Ashish Bansal; the period of custody undergone by the petitioner and the fact that the petitioner has been granted bail in the other cases registered against her, the further incarceration of the petitioner is not required.

9. Thus, the present petition is allowed and the petitioner is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.
10. The petitioner shall surrender her passport, if not already done so.
11. The petitioner shall appear before the police station concerned on the first Monday of every month and shall furnish an affidavit each time that she is not involved in any other crime other than the present case and those mentioned in the custody certificate during the time she is on bail.

(JASJIT SINGH BEDI)
JUDGE

26.05.2022
JITESH

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No