

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

206

**CRM-M-45525-2021
Date of decision: 06.04.2022**

Alok Vishwakarma

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sandeep Choudhary, Advocate
for the petitioner.

Mr. Rohit Arya, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

This is the second petition filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in case FIR No.268 dated 18.06.2020 lodged under Sections 409 and 420 IPC (Sections 120B, 467 and 34 IPC were added lateron) registered at Police Station Sector 53, District Gurugram.

Reply by way of affidavit of Sanjeev Kumar, HPS, Assistant Commissioner of Police, Traffic Hq., Gurugram on behalf of the respondent-State has been filed in the Registry of this Court which is taken on record subject to all just exceptions.

Learned counsel for the petitioner inter alia contends that the petitioner, who was an employee of the complainant had been made a scapegoat by him and on being caught on the wrong foot, a false case had been planted upon him.

On a pointed query put to the learned counsel for the petitioner as to what were the material change in circumstances subsequent ot the withdrawal of the previous petition under Section 439

Cr.P.C. on 16.02.2021, he submitted that the trial had been proceeding at a very slow pace and only 04 out of the 15 prosecution witnesses cited had been examined till date.

It was submitted by learned counsel for the petitioner that as the petitioner had been in custody since 18.06.2020, he be extended the concession of bail as there was no likelihood of the trial concluding in the near future. It was submitted that the Hon'ble Apex Court had extended the concession of bail to accused who were involved in heinous crimes on account of their long custody in jail by holding that detaining under trials for an indefinite period, would amount to violation of their rights under Article 21 of the Constitution of India. In support, learned counsel placed reliance upon ***Sanjay Chandra Vs. CBI : 2011(4) RCR (Criminal) 898 and Dipak Shubhashchandra Mehta Vs. C.B.I. and another : 2012(1) RCR (Criminal) 870***. While making his submissions on the merits of the case, learned counsel submitted that in fact the mastermind behind the alleged scam were none other than the complainant and his wife themselves and the said fact found clearly reflected in the complaint given by one Arun Kumar Malik to the Police at Gurugram vide Annexure P-7. While drawing the attention of this Court to the said Annexure, learned counsel submitted that all the allegations had been levelled against the complainant and his wife who were the proprietor and business managers respectively of M/s Espandia Trans Global Solutions. It was evident that it were the complainant and his wife who had sold the Director General of Foreign Trade (in short, 'the DGFT') Licences for extraneous consideration in the open market and after being exposed, they had for reasons but

obvious put the entire blame on the petitioner since he was their employee.

Per contra, learned State counsel while vehemently opposing the prayer and submissions made by the counsel opposite submitted that the delay in conclusion of the trial had been on account of pandemic, however, since the Courts had resumed normal functioning there was every likelihood that the trial would not take much time to conclude as only 11 witnesses remain to be examined. It was submitted that the next date fixed before the trial Court was 30.05.2022 when some more prosecution witnesses were likely to be examined. While inviting the attention of this Court to the reply, learned State counsel submitted that during investigation of the FIR in question it had come to the fore that online licences had been got issued clandestinely by none other than the petitioner himself from the DGFT. It was submitted that neither his employers i.e. M/s Espandia Trans Global Solutions were informed by the petitioner nor any intimation was given to the companies in whose names the petitioner had got the licences issued. It was further submitted that after getting these online licences, the petitioner sold them to one Yuvraj Sharma and earned around Rs.1.5 crores in cash. It was submitted that the bank account transactions of the petitioner clinchingly lent credence to his role in the alleged crime. It was further submitted that the petitioner had also constructed a house from the sale proceeds in his native place. Learned State counsel submitted that co-accused Yuvraj Sharma to whom the petitioner had sold the licences and earned approximately Rs.1.5 crores was still at large. Learned State counsel further submitted that another

case also stood registered against the petitioner bearing FIR No.276 dated 28.06.2020 under Section 224 IPC at Police Station Sector 53, Gurugram after the petitioner had tried to escape and flee subsequent to the registration of the FIR in question. Learned State counsel submitted that the complainant as well as PW1 Arun Kumar Malik, employee of M/s Viney Corporation Ltd. had been examined before the trial Court where they both in unequivocal terms deposed qua the role of the petitioner in the crime in question.

I have heard learned counsel for the parties and perused the material placed on record.

Prima facie, the petitioner sold 20 DGFT licences of six different companies without permission of the complainant i.e. the proprietor of M/s Espandia Trans Global Solutions. The licences which were sold by the petitioner were being used in the payment of custom duty by the company and were also being issued in the shape of export incentive by DGFT. Undoubtedly, the petitioner has been in custody for 01 year and 10 months, however, the delay in the conclusion of the trial evidently has been on account of the outbreak of the pandemic. 11 prosecution witnesses remain to be examined. This Court cannot turn a blind eye to the fact that subsequent to the registration of the FIR in question, the petitioner had tried to flee and escape as a result of which FIR No.276 under Section 224 IPC dated 28.06.2020 was registered against him. In addition to that, co-accused Yuvraj Sharma to whom the petitioner sold licences is still at large. There is every likelihood that in case the petitioner is enlarged on bail he could abscond or even try to influence some other material witnesses who are yet to be

examined.

In the facts and circumstances as enumerated hereinabove, this Court does not deem it fit to extend the concession of bail to the petitioner.

Accordingly, the instant petition is dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

However, keeping in view, his long custody period this Court deems it fit to direct the trial Court to make earnest efforts to conclude the trial expeditiously preferably within six months from today.

06.04.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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