

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48291-2021 (O&M)

Date of decision : 15.12.2022

Sant Kumar and another

..... Petitioners

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. B.S. Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate
for the petitioners.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (Oral)

CRM-48388-2022

This is an application filed under Section 482 Cr.P.C. for placing on record documents as Annexures P-4 to P-6 which are three even date FIRs dated 10.01.2019.

Notice of the application.

On the asking of the Court, Mr. Ramesh Kumar Ambavta, AAG, Haryana, accepts notice on behalf of the respondent-State and submits no objection.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions. Documents are taken on record.

CRM-M-48291-2021

Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioners in case bearing FIR No.0014 dated 10.01.2019, registered for the offences punishable under Sections 420, 467, 468, 471, 120-B and 201 of IPC, at Police Station Bhuna, District

Fatehabad.

2. Counsel for the petitioners submits that it is a case wherein the petitioners have been falsely implicated. Four different FIRs were registered on the same day against petitioner No.1. He has not been named in any of these. During the course of investigation, Dalbir nominated one Kamal, who further in his disclosure, nominated the present petitioners. He submits that as per the allegations levelled in the FIR read with disclosure statement, the petitioners are accused of having floated bogus/fake firms in the name of one Dalbir Singh s/o Saroop Singh. The allegation is that Dalbir Singh approached the petitioners for employment and he was misused to create these firms with an intent to claim ITC. He further submits that even though the petitioners are alleged to have claimed in ITC fraudulently, yet they have not been booked for any offence punishable under the GST Act as under the provisions of GST, the same would have been bailable offence keeping in view the amount involved.

3. Counsel further contends that in view of the fact that Dalbir Singh does not deny his signatures, it will be highly debatable as to whether offences punishable under Sections 467 and 468 will even be made out. The petitioners are in custody in the present case since 19.04.2021. Report under Section 173 Cr.P.C. already stands presented. Majority of the evidence is in form of documents which are already in the possession of the prosecution agency and thus, there cannot be any apprehension that the petitioners would tamper with the same. Apart from that the petitioners already stands admitted to regular bail in other two cases. Reliance is placed upon orders passed in CRM-M-48559-2021 dated 11.02.2022 and CRM-M-48414-2021 dated 05.12.2022.

4. Counsel thus contends that in view of the fact that it is a magisterial trial and the petitioners are in custody for last more than one and a half year, it is a case wherein the petitioners are entitled for regular bail.

5. Per contra Mr. Ambavta submits that there are serious allegations against the petitioners involving economic offence. Petitioners are said to have created network of fake firms to procure ITC fraudulently and thus the petitioners would not be entitled for grant of regular bail. However, Mr. Ambavta does not dispute that the investigation stands completed and challan has been presented. Out of 33 cited witnesses, 23 already stand examined.

6. I have heard counsel for the petitioners and have gone through the records of the case.

7. Though as per settled law, economic offences constitute a separate class, yet the right of investigating agencies to have effective interrogation of the accused has to be consciously integrated with the right to liberty of the accused. Dealing extensively with the rights of the accused in economic offences, Supreme Court in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another*, reported as *2022 AIR (Supreme Court) 3386* held as under:-

“xx xx xx

66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of **P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the **Special Act**, and the attending circumstances are a few of the factors to be

taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field:-

Precedents

P. Chidambaram v. Directorate of Enforcement,
(2020) 13 SCC 791:

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that

regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

Sanjay Chandra v. CBI (2012) 1 SCC 40:

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated,

to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

X XXX XXX

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

ROLE OF THE COURT

67. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody

would be a case of grave injustice.

68. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in [the Code](#), has to be preserved, protected, and enforced by the Criminal Courts. Any conscious failure by the Criminal Courts would constitute an affront to liberty. It is the pious duty of the Criminal Court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest. This Court in **Arnab Manoranjan Goswami v. State of Maharashtra**, (2021) 2 SCC 427, has observed that:

“67. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. [Section 482](#) recognises the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of [CrPC](#) “or prevent abuse of the process of any court or otherwise to secure the ends of justice”. Decisions of this Court require the High Courts, in exercising the jurisdiction entrusted to them under [Section 482](#), to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one—and a significant—end of the spectrum. The other end of the spectrum is equally important : the recognition by

Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure, 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognised the inherent power in Section 561-A. Post- Independence, the recognition by Parliament [Section 482 CrPC, 1973] of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it.

Equally it is the duty of courts across the spectrum—the district judiciary, the High Courts and the Supreme Court—to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum—the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.” (emphasis supplied)”

8. The facts of the present case when viewed from the prism of the afore settled law, this Court finds that the petitioners deserve concession of regular bail.

9. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioners the fact that the investigation already stands concluded, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

10. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

15.12.2022

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No