

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**266-A****CRM-M-10204 of 2023****Reserved on : 21.04.2023****Date of Decision : 29.04.2023**

Ataul Ansari @ Atul Ansari

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.S. Sidhu, Advocate for the petitioner.

Ms. Anju Sharma Kaushik, DAG Punjab.

ALKA SARIN, J.

1. This is the fourth petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.188 dated 29.07.2019 under Section 420 of the Indian Penal Code, 1860 (Sections 419, 467, 468, 471 and 120-B IPC were added later on) and Sections 66 and 66-D of the Information Technology (Amendment) Act, 2008 registered at Police Station Civil Lines, Patiala, District Patiala. The first petition being CRM-M-15409-2020 was dismissed as withdrawn vide order dated 17.12.2020. The second petition being CRM-M-27403-2021 was dismissed vide a detailed order dated 18.01.2022 and the third petition being CRM-M-22842-2022 was dismissed vide order dated 27.07.2022.

2. Learned counsel for the petitioner would contend that the petitioner has been in custody since 16.08.2019. It is further the contention of counsel for the petitioner that the change in the circumstances is that the trial is not progressing and out of 20 witnesses only 06 have been examined. Learned counsel for the petitioner would further contend that the complainant in the present case has since been examined. Counsel for the

petitioner has also contended that the official witnesses in the present case have not been appearing despite bailable/non-bailable warrants having been issued against them. It has further been pointed out that vide order dated 29.03.2023, the salary of one of the official witnesses was also attached for non-appearance. *Qua* the other cases registered against the petitioner, it has been contended that in two cases the petitioner is on bail and the third case bearing FIR No.208 dated 17.08.2019 registered at Police Station Civil Lines, Patiala is for the same offence as the present case.

3. *Per contra* learned State counsel has contended that the petitioner is a habitual offender and hence does not deserve the concession of bail. Learned State counsel is, however, not in a position to deny the fact that FIR No.208 dated 17.08.2019 also pertains to the same offence as the present case. Learned State counsel is also not in a position to deny the fact that in the present case despite the challan having been filed on 08.11.2019 and charges having been framed on 20.12.2019, only 06 out of 20 witnesses have been examined and that some of the official witnesses are not appearing before the Court for recording of their statements despite issuance of bailable/non-bailable warrants against them. Further, the State counsel is not in a position to deny the fact that the salary of one of the official witnesses has been attached for non-appearance.

4. I have heard learned counsel for the parties.

5. In the present case the petitioner has been in custody since 16.08.2019. Out of three other cases pending against the petitioner, in two cases the petitioner has been granted bail and one case admittedly is *qua* the same offence as the present case. The challan in the present case was filed on 08.11.2019 and charges were framed on 20.12.2019. Despite the charges

having been framed on 20.12.2019, till date out of 20 witnesses only 06 have been examined. A perusal of *zimni* orders of the Trial Court would reveal that the official witnesses are not coming forward to get their statements recorded, despite bailable/non-bailable warrants having been issued against them. Vide order dated 29.03.2023 the salary of one of the official witnesses i.e. SI Karamjit Singh has been ordered to be attached along with issuance of non-bailable warrants. It is only thereafter that the said witness appeared and his examination-in-chief was partly recorded.

6. Hon'ble Supreme Court in the case of **Mohd. Muslim @ Hussain vs. State (NCT of Delhi) [Special Leave Petition (Crl.) Nos.915 of 2023]** decided on **28.03.2023**, has held as under :

“21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State 1993

Cri LJ 3242 as "a radical transformation" whereby the prisoner:

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal". Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials - especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

7. In view of the above, without commenting upon the merits of the case and keeping in view the long custody of the petitioner, I deem it a fit case to grant the concession of regular bail to the petitioner. The

petitioner is directed to be released on bail subject to his furnishing heavy bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

8. However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

9. It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

10. Disposed off. Pending applications, if any, also stand disposed off.

29.04.2023
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO