

CRM-M-18195-2023

-1-

(213)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18195-2023

Date of Decision: 09.05.2023

ANAND BIHAR YADAV

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Ramneek Mishra, Advocate
Mr. Rupinder Pal Singh, Advocate
Mr. Gutam Dutt, Advocate and
Mr. Eknoor Kaur Sara, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

Mr. G.S. Sirphikhi, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.0121 dated 15.12.2022 (Annexure P-1) registered under Section 406, 420 of IPC, at Police Station Dhakoli, District SAS Nagar.

2. The brief facts of the case are that the complainant-Muktesh Diwan son of Rajesh Diwan filed a complaint with the Senior Superintendent of Police, SAS, Mohali (Punjab) dated 12.09.2022 stating that the petitioner/accused had induced him (complainant) to part with an amount of Rs.4,15,70,000/- on different occasions by persuading him (complainant) to become a Director of a company M/s Avika Airlines Pvt. Ltd. with a share-

CRM-M-18195-2023

-2-

holding of 10.15 %. Some of the said amount had been paid in cash. The petitioner/accused had used the amount not only in connection with the business of the company but also for various other purposes as well. When the complainant made a demand for the return of the amount, the petitioner issued various post-dated cheques which were dishonoured. The petitioner had induced him (complainant) by stating that he (petitioner) had links with U.P. based politicians, police officers and film personalities including a Hindu/Punjabi film actress. The petitioner had also introduced him (complainant) with a film actress. Therefore, the intention of the petitioner from the very outset had been to cheat him (complainant) and the amount taken from him (complainant) had been misused and misutilized.

3. The learned counsel for the petitioner contends that it was the complainant who was the Director of M/s Avika Airlines registered at Lucknow, Uttar Pradesh. The petitioner had never been a Director of the said company. There were various financial transactions between the parties as was borne out from the ledger (Annexure P-2). The instant FIR had been got registered by the complainant to avoid the making of payments to the petitioner. The entire case pertained to a civil dispute at best and the FIR in the present case was not maintainable. The petitioner had been illegally arrested at Jodhpur and produced in the Courts at Mohali without following the mandate of law as laid down in **Arnesh Kumar Vs. State of Bihar, AIR 2014 SC 2756**. The petitioner was suffering from multiple ailments as was borne out from documents (Annexure P-4). As the petitioner was in custody since 11.03.2023, was a first-time offender and none of the 27 prosecution

CRM-M-18195-2023

-3-

witnesses had been examined so far, he was entitled to the concession of bail as the trial of the present case was not likely to be concluded anytime soon and the case was triable by the Court of a Magistrate.

4. The learned State counsel contends that a huge fraud has been committed upon the complainant. Therefore, the petitioner was not entitled to the grant of bail. He, however, concedes that the petitioner is a first-time offender, in custody since 11.03.2023 and none of the 27 prosecution witnesses had been examined so far.

5. On the other hand, the learned counsel for the complainant contends that the petitioner with dishonest intention induced the complainant to part with a huge amount of money. After receiving the said amount, the petitioner had misused the same and had not invested it in the business. Therefore, the conduct of the petitioner and the nature of the allegations against him did not entitle him to the grant of bail as the case could not be said to be one of civil nature only.

6. I have heard the learned counsel for the parties at length.

7. This Court in the case of **Maninder Sharma Versus State Tax Officer, State Tax, Mobile Wing, Jalandhar, Punjab, CRM-M-24033-2021, decided on 31.08.2022**, held as under:-

6. Therefore, effectively, what has been held in the aforementioned judgments is that it would be contrary to the concept of personal liberty enshrined in the constitution that any person should be punished in respect of any matter upon which he has not yet been convicted or that in any circumstances he should be deprived of his liberty only upon the belief that he will tamper with the witnesses/evidence, if

granted bail except in the most extraordinary circumstances. Undoubtedly, the seriousness of the charges against the accused are no doubt one of the relevant considerations while considering the bail application but it would not be the only factor. The other relevant factor would be the sentence that could be imposed upon the said accused after trial and conviction. If seriousness of the charge was the only test then it would not be balancing the constitutional rights. Further, while considering the grant of bail, the triple/tripod test would also be a relevant consideration. The three factors as set out in the said test are:- (i) Whether the accused is a flight risk; (ii) Whether the accused will tamper with the evidence, if granted bail & (iii) whether the accused could influence the witnesses, if granted bail.

7. Since the grant or refusal of bail lies in the discretion of the Court the discretion is to be exercised with regard to the facts and circumstances of each case. However, bail is not to be denied to satisfy the collective sentiments of a community or as a punitive measure.

8. Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts), in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.

9. Coming back to the facts of the present case, it may be pertinent to mention here that the petitioners were arrested on 13.03.2021 and the complaint came to be filed on 12.05.2021. Therefore, as on date they have undergone a total custody period of approximately 01 year and 06

months. The maximum sentence that could be awarded would be 05 years. As yet, even the charges have not been framed and as many as 66 prosecution witnesses are yet to be examined. Therefore, at any rate, the trial cannot be concluded any time soon. Further no serious apprehension has been expressed by the prosecution of the petitioners being flight risks, or that they would tamper with the evidence or influence witnesses in case bail was granted to them. Even otherwise the evidence is primarily documentary in nature and in custody of the State.

10. In view of the aforementioned circumstances, the further incarceration of the petitioners would be wholly unnecessary. Thus without commenting on the merits of the case, the aforementioned petitions are allowed and the petitioner- Maninder Sharma son of Sh. Satya Varat Rattan (in CRM-M-24033-2021), petitioner-Vinod Kumar son of Sh. Om Parkash (in CRM-M-32902-2021), Sunny Mehta son of Sh. Kuldeep Mehta (in CRM-M-32903-2021) and Sandeep Singh son of Sh. Ikbal Singh (in CRM-M-36121-2021) are ordered to be released on bail subject to the satisfaction of the Trial Court, concerned which is at liberty to impose any stringent conditions that it deems appropriate.”

8. The veracity of the prosecution case against the petitioner shall be a matter of adjudication during the course of Trial. The case is triable by the Court of a Magistrate. There is nothing to suggest that the petitioner would tamper with the evidence or abscond from justice in case he is granted the concession of bail. He is otherwise stated to be in custody since 11.03.2023 and none of the 27 prosecution witnesses have been examined so far. Therefore, his further incarceration in the present case is not required

CRM-M-18195-2023

-6-

moreso, as the Trial of the present case is not likely to be concluded in the near future.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Anand Bihar Yadav son of Shri Prabhu Narayan is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

11. If the petitioner or his family members/associates make any attempt to contact/threaten/intimidate the witnesses in the present case, the State would be at liberty to move an application for cancellation of bail granted vide this order.

12. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.3,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

13. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

09.05.2023

JITESH

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