

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**266****CRM-M-31560 of 2021****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 second petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.208 dated 17.08.2019 under Sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and Sections 65, 66, 66-C, 66-D and 66-E of the Information Technology (Amendment) Act, 2008 registered at Police Station Civil Lines, Patiala, District Patiala. The first petition being CRM-M-16003-2020 was dismissed as withdrawn vide order dated 17.12.2020.

2. Learned counsel for the petitioner would contend that the petitioner was in custody in FIR No.188 dated 29.07.2019 under Sections 419, 420, 467, 468, 471 and 120-B IPC and Sections 66 and 66-D of the Information Technology (Amendment) Act, 2008, registered at Police Station Civil Lines, Patiala. During interrogation, on the basis of a disclosure statement, the present FIR was lodged. It is further the contention that the offence alleged to have been committed is the same as in FIR No.188 dated 29.07.2019. It is further the contention of the learned counsel for the petitioner that instead of giving a supplementary challan the second FIR has

been lodged. Learned counsel for the petitioner would further contend that the change of circumstances is that the petitioner has been in custody for a period of 03 years 08 months and 02 days and despite the challan having been presented on 18.11.2019 and charges framed on 23.09.2022, out of 17 witnesses only 06 PWs have been examined. It is further the contention that the official witnesses are not coming forward to get their statements recorded despiteailable warrants having been issued for securing their presence.

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 on instructions states that the present FIR is in continuation of the offence involved in FIR No.188 dated 29.07.2019 and that the present FIR has been registered on the basis of a disclosure statement of the co-accused made during interrogation. Learned State counsel is, however, not in a position to deny that out of 17 witnesses only 06 PWs have been examined and that despiteailable warrants having been issued the official witnesses are not coming forward to get their statements recorded.

4. I have heard learned counsel for the parties.

5. The petitioner has been in custody for a period of 03 years 08 months and 02 days. Out of the three other cases pending against the petitioner, in two cases the petitioner has been granted bail and one other case being FIR No.188 dated 29.07.2019 registered at Police Station Civil Lines, Patiala is *qua* the same offence. The challan in the present case was presented on 18.11.2019 and charges were framed on 23.09.2022. Out of 17 witnesses only 06 have been examined till date. A perusal of the *zimni*

orders reveals that the official witnesses are not coming forward despite bailable warrants having been issued to secure their presence.

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