

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

213-1 CRM-M-47640-2021 (O&M)
Date of decision: 12.10.2023

Davinder Singh Gill ..Petitioner

Versus

State of UT Chandigarh and another ..Respondents

CRM-M-26227-2023 (O&M)
Date of decision: 12.10.2023

Davinder Singh Gill ..Petitioner

Versus

State of UT Chandigarh ..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Rupinder Khosla, Sr. Advocate assisted by
Mr. Sarvesh Malik, Advocate
Mr.Preetinder Singh Ahluwalia, Advocate
for the petitioner

Mr. Manish Bansal, PP, UT Chandigarh
assisted by Insp. Shiv Charan.

Mr. BS Bhalla, Advocate and
Mr. Varinder Singh, Advocate for the complainants.

AMAN CHAUDHARY, J.

CRM-M-47640-2021

1. Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure is for grant of regular bail to the petitioner in FIR No.199 dated 24.05.2018, registered under Sections 406, 420, 120-B IPC (Sections 467, 468 and 471 IPC added vide order dated 02.09.2023), at Police Station Sector 36, Chandigarh.

2. Learned Senior counsel contends that the FIR got lodged in the year 2018, however, the name of the petitioner surfaced in the year, 2021, during the course of investigation, upon which he was arrested on 20.09.2021 and has been in custody for the last 2 years and about 1 month. It is a case of Magisterial trial. The charges were framed on 28.10.2022 and till date, out of the two PWs (complainants), examination of one had been completed, whereas cross-examination of another is yet to be done. The petitioner has been falsely implicated in the cases on account of being a star witness/complainant in two cases transferred to CBI against a senior police officer. Out of the 24 cases against him, 11 are under the Negotiable Instruments Act and 13 under IPC, out of which, he has been acquitted in 2, on bail in 5, cancellation presented in 1. Reliance is placed on the judgments of Hon'ble The Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382, **Prabhakar Tewari vs. State of UP and another**, (2020) 11 SCC 648 and **Ganesh Shivkumar Sagar vs. State of Gujarat**, 2023 SCC OnLine SC 903. The affidavit dated 11.10.2023, filed in terms of order dated 20.09.2023, is taken on record.

3. The custody certificate dated 12.10.2023, filed by learned State counsel is taken on record, as per which, the petitioner is behind bars for 2 years and 15 days.

4. Learned counsel for UT Chandigarh assisted by learned counsel for the complainant oppose the bail petition on the ground that there are serious allegations against the petitioner of having taken money for sending the students abroad and is a habitual offender. Learned counsel for UT Chandigarh is however unable to controvert the

submissions made regarding stage of the trial and the status of cases.

5. Heard.

6. In **Maulana Mohd. Amir Rashadi** (supra) Hon'ble The Supreme Court had held that, "As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc." Reiterating in **Prabhakar Tewari** (supra), it was observed that, "The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail."

7. Hon'ble Supreme Court in **Ganesh Shivkumar Sagar** (supra), granted bail to the accused in FIR registered under Sections 406 and 409 IPC, Sections 3 and 4 of the Gujarat Protection of Interest of Depositors (Financial Establishments) Act and Section 4, 5 and 6 of the Lottery Cheating and Money Circulation Scheme Act, after a custody of almost 1 year and 3 months, relevant paras thereof read thus:

"2. The petitioner appears to be a freelancer digital marketer against whom four or more FIRs have been registered in different States. It is alleged that Bux Coin – crypto currency was launched by the company Bitsolives. The said company is run by petitioner's co-accused Mohsin Jamil, who is also alleged to be in the business of blockchain development, crypto currency and forex trading etc. It is alleged that the petitioner portrayed himself as the master distributor of the bux coin – crypto currency as well as Director of the above-named company. Various innocent investors in different States statedly purchased the crypto currency from the company. Thereafter, a sham exchange called as 'Cash Finex' was set up by the petitioner and his co-accused from Dubai and the

investors in the company (Bitsolives) were allured to sell their crypto currency through that platform. However, the exchange was allegedly closed after some time. Thereafter, the company also disappeared from the scene.

3. The petitioner was arrested on 30.04.2022 and is in custody since then. He has already been subjected to custodial interrogation by the police of State of Maharashtra as well as State of Gujarat. Presently he is in judicial custody in the State of Gujarat in the above captioned case. It is fairly stated by learned counsel that the investigation is complete and the chargesheet has been filed and the trial is yet to commence and its conclusion is likely to take some time.”

8. Considering the judgments referred to hereinabove and the facts and circumstances of the case, in particular that the petitioner is in custody for last 2 years and 15 days; the offences alleged against the petitioner are triable by the Court of Magistrate; though charges were framed on 28.10.2022 and testimonies of only two prosecution witnesses have been recorded, one of whom has been cross-examined, thus his further incarceration would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

9. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to his not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurise/intimidate the prosecution witnesses.
- (iii) The petitioner will appear before the trial Court on each and every date fixed.
- (iv) The petitioner shall not commit an offence similar to the offence of which, he is an accused,

or for commission of which he is suspected of.

- (v) The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.
- (vi) The petitioner shall furnish a personal bond in the sum of Rs.25,00,000/- with two local sureties of the like amount to the satisfaction of the trial Court/Duty Magistrate, one of whom will be in his blood relation.
- (vii) The petitioner shall at the time of execution of the bond furnish an affidavit giving his permanent address and mobile number to the Trial Court and concerned Police Station forthwith and undertaking therein to not change the same till the conclusion of the trial.
- (viii) The petitioner shall keep the GPS turned on and not format the phone or delete its WhatsApp chats or call logs.
- (ix) The petitioner shall surrender his passport, if not done already and shall not leave the country without prior permission of the trial Court.
- (x) The petitioner shall also report to the concerned Police Station on the first Monday of every month.
- (xi) The trial Court/Duty Magistrate may impose any other stringent condition, as deemed appropriate while releasing the petitioner.
- (xii) The petitioner shall not in any manner misuse his liberty.

10. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

11. In view of the above, it is clarified that nothing contained in the present order shall be construed as an opinion on the merits of the case and the trial Court shall proceed uninfluenced therefrom.

CRM-M-26227-2023 (O&M)

The instant petition under Section 437(6) of the Code of Criminal Procedure has been filed for setting aside the order dated 24.04.2023 passed by learned Additional Sessions Judge, Chandigarh, dismissing the revision preferred against the order dated 17.01.2023 rendered by learned Judicial Magistrate, 1st Class, Chandigarh whereby the application filed under Section 437(6) for grant of bail to the petitioner, was dismissed.

In view of order passed in the aforesaid CRM-M-47640-2021, the present petition has been rendered infructuous and disposed of as such.

Photocopy of this order be placed on the connected file.

(AMAN CHAUDHARY)
JUDGE

12.10.2023
Ashok

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No