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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.47158 of 2022 (O&M)

Date of decision: 24.01.2023

Avtar Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rohit Kaushik, Advocate
for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

Mr. Gurinderjit Singh, Advocate
for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this 2nd petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.236 dated 03.10.2020, for offence punishable under Sections 420, 465, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (in short 'IPC') registered at Police Station City Rajpura, District Patiala.

The earlier one was dismissed on merits on 14.02.2022, by passing the following order:-

“Brief facts of the case, as noticed in the order of the Additional Sessions Judge, Patiala, are reproduced as under:-

“2. Arguments heard. The instant case was registered on the basis of complaint made by Jarnail Kaur wife of late Bakshish Singh, resident of Village Rampur Khurd, Tehsil Rajpura. A cash credit limit of Rs.90,00,000/- (Rupees ninety lacs only) was sanctioned in her name by Punjab and Sind Bank, Branch Kukkar Majra

in the year 2015 for agriculture purposes against the mortgage of her land measuring 36 bighas, situated in Village Rampura Khurd. The allegation of Smt. Jarnail Kaur is that infact she is an illiterate lady, aged about 76 years. She wanted to get loan of Rs. 15,00,000/- only in order to discharge her liability to the extent of about Rs.13,00,000/- towards Housefed. She had contacted Avtar Singh of her village to help her in getting the loan. Avtar Singh and his son Gurwinder Singh contacted Sukha Singh and Dhian Singh and all of them obtained her thumb impressions on the loan documents and they got sanctioned the limit of Rs.90,00,000/- instead of Rs.15,00,000/- in her name by conniving with the Branch Manager. After the said amount was got released, they gave Rs.14,50,000/- to her and she deposited Rs.13,25,000/- with Punjab Housefed and spent the remaining amount on her household matters. Initially she did not come to know that the loan of Rs.90,00,000/- has been sanctioned in her name. She came to know about this fact only when the bank started proceedings for recovery of the amount in question. In the loan documents Gurwinder Singh son of Avtar Singh was shown as coborrower and in the loan papers the name of his father was wrongly mentioned as 'Mohinder Singh' instead of 'Avtar Singh'. A joint account of Jarnail Kaur with said Gurwinder Singh was also got opened. The complainant further alleged that even her fake ration card showing her as resident of Village Kheri Bhai Ka was got prepared by Avtar Singh, Gurwinder Singh, Dhian Singh and Sukha Singh so that loan could be obtained from the branch situated at Village Kukkar Majra. Out of the loan amount, the amount of Rs.50,00,000/- was admittedly transferred to the bank account of accused Avtar Singh and amount of Rs.25,00,000/- was transferred to the account of his son Gurwinder Singh.

3. Learned counsel for the applicants-accused has argued that infact Jarnail Kaur obtained loan of Rs.90,00,000/- by mortgaging her land. He has conceded that out of the loan amount, Rs.50,00,000/- had been transferred to the bank account of Avtar Singh and Rs.25,00,000/- had been transferred to the account of Gurwinder Singh. However he submits that lateron Jarnail Kaur accompanied them to the bank and said amount was withdrawn from the bank accounts in her presence and she received the said amount from both the accused-applicants. He has argued that accusedapplicant Avtar Singh is in custody since 15.1.2021 and accused-applicant Gurwinder Singh is in custody since 23.1.2021 and they should be granted bail.

4. On the other hand, learned Addl. Public Prosecutor and learned counsel for the complainant have

argued that applicants-accused have played fraud upon an old lady. Not only this case, a number of other cases of similar nature are registered against them. They should not be released on bail as in case of grant of bail, they can flee away.”

Counsel for the petitioner has argued that, in fact, the complainant has obtained a loan of Rs.90.00 lacs, out of which Rs.50.00 lacs were transferred in the account of the petitioner – Avtar Singh, at the same time, when the loan was disbursed.

The only argument made by counsel for the petitioner is that the complainant had gone to the Bank and has put her thumbimpression on the withdrawal form, however, this fact is not disputed by counsel for the petitioner that the amount of Rs.50.00 lacs were transferred in the account of the petitioner for which there is no valid explanation on record.

Counsel for the State assisted by counsel for the complainant has not disputed the factual position but opposed the prayer for bail.

Reply by way of affidavit of the Deputy Superintendent of Police, Sub-Division Rajpura, District Patiala, is on record in which after verifying the facts of the FIR, it has come in the investigation that on 22.07.2015, the petitioner along with his son Gurwinder Singh and others, took the complainant to Punjab & Sind Bank, Branch Kukkar Majra, District Fatehgarh Sahib, where she gave her thumb-impressions on the loan documents and took a loan of Rs.90.00 lacs and thereafter, they took Rs.50,000/- as commission from the complainant. Again, during the investigation it has come that after the loan was sanctioned, the petitioner got Rs.50.00 lacs transferred in his account and Rs.25.00 lacs in the account of his son Gurwinder Singh and only Rs.15.00 lacs were given to the victim, who came to know about the fraud when she received a notice from the Bank. The affidavit also states that the petitioner is involved in 03 more FIRs i.e. FIR No.53 dated 02.06.2019 under Sections 341, 323, 324, 341 IPC, Police Station Banuris, FIR No.80 dated 10.04.2019 under Sections 419, 420, 467, 468, 471, 120-B IPC, Police Station City Rajpura and FIR No.91 dated 20.09.2018 under Sections 406, 420, 120-B IPC, Police Station Banuris, which reflects his criminal bent of mind. The son of the complainant is also a co-accused in FIR No.53, apart from another FIR No.410.

Accordingly, I find no merit in the present petition and the same is hereby, dismissed.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has argued that the offences are triable by the Court of Magistrate and the custody of the petitioner is 02 years and 10 days and charges are framed only on 21.10.2022 and even thereafter, no prosecution witness has been examined and the trial is still at the preliminary stage.

Additionally, counsel for the petitioner has submitted that the present FIR was registered on 03.10.2020 and 02 years prior to that, 03 complaints were filed at the instance of Amrik Singh, who is the son of the complainant Jarnail Kaur and in all these complaints, on account of non-payment, the petitioner stands convicted by the Judicial Magistrate Ist Class, Rajpura and the appeal of the petitioner is pending before the Additional Sessions Judge.

Counsel for the petitioner has further contended that it will be a matter of trial whether the case set up in the complaint and in the present FIR by the mother and son are, in fact, relating to the same transaction or with regard to some other transaction.

Counsel for the State, on instructions from ASI Jaspal Singh, assisted by counsel for the complainant could not dispute the fact that the custody of the petitioner is 02 years and it is also not disputed that the petitioner stands convicted in three criminal complaints filed by Amrik Singh, son of Jarnail Kaur with regard to dishonouring of the cheque. It is further not disputed that the charges are framed only in October, 2022 and till date, no PW has been

examined. Counsel for the State further argued that there are 09 similar FIRs pending against the petitioner.

Reliance can be placed upon the judgment “*Prabhakar Tewari vs State of U.P. and another*”, 2020(2) RCR (Criminal) 831, wherein it has been held by the Hon’ble Supreme Court that the allegations of grave and serious offences and pendency of several criminal cases against the accused cannot be a ground to refuse prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years and 10 days; the custodial interrogation of the petitioner is not required; in view of *Prabhakar Tewari’s case (supra)* and the fact that no PW has been examined so far and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

24.01.2023
yakub

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