

CRM-M-46000-2023 (O&M) 1

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-46000-2023 (O&M)

Date of Decision: 06.12.2023

DINESH SHARMA

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harsh Mehla, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 1185 dated 10.12.2019 registered under Sections 120-B, 23, 24, 405, 406, 415, 418, 420, 463, 465 and 468 of Indian Penal Code (Sections 23, 24, 405 and 415 of IPC deleted later on) at Police Station Gurgaon Sadar District Gurgaon.

2. Present FIR was lodged on the complaint made by Allahabad Bank on the allegations that the accused persons in criminal conspiracy with each other had obtained the public money from the Allahabad Bank as loan amount and thereafter defaulted in paying the installments. The property which was hypothicated with the Bank was found to be non-existent. The complainant-bank has suffered a loss of 37,70,000/-. Loan was sanctioned in favour of Rohit Chandra co-accused and the aforementioned loan was sanctioned on 09.05.2016. The beneficiary was required to pay Rs. 32,500/- every month as monthly installment for 354 months towards repayment of the loan. The Tripartite agreement for

housing loan was executed between the petitioner, co-accused Rohit

Chandra and the complainant Bank. After February 2017, the co-accused Rohit Chandra stopped paying installments and even stopped answering the phone calls of the bank officials. On these allegations, the complainant-bank filed the complaint before the Station House Officer, Sadar Police Station Gurugram on 14.01.2019 but no action was taken on this complaint. Thereafter, the complainant-bank approached the concerned jurisdictional Court by filing the application under Section 156(3) of the Code of Criminal Procedure and on the directions of the concerned Magistrate, the present FIR was lodged.

3. Learned counsel for the petitioner inter alia contends that the petitioner was not the beneficiary of the said loan and it was the co-accused Rohit Chandra, who had availed the loan facility and he was obligated to repay the loan amount. Moreover, the dispute involved in the present case is purely of civil nature. The complainant-Bank has already initiated proceedings under The Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act, 2002') before the Debt Recovery Tribunal, Chandigarh and the co-accused has approached the Real Estate Regulatory Authority, Panchkula. The petitioner is behind the bars since 23.05.2022.

4. Per contra, learned State counsel has filed the custody certificate, which is taken on record and opposes the prayer for grant of bail to the petitioner on the ground that he is involved in 05 more FIRs of similar nature and some complaints under Section 138 of Negotiable Instruments Act are also pending against him.

5. Having heard the learned counsel for the parties and after

perusing the record, it transpires that the petitioner is behind the bars since 20.06.2022 and has already undergone incarceration for a period of 01 year 05 months and 21 days as on 10.12.2023. The investigation of the case is complete and final report under Section 173 of Cr.P.C. has already been submitted on 17.08.2022. The trial of the case has not commenced as charges are yet to be framed and there are 14 prosecution witnesses. Thus, the conclusion of the trial will take long time. Culpability, if any, would be determined at the time of trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

6. In view of the ratio of law laid down by Hon'ble Supreme

Court in *Prabhakar Tiwari Vs. State of UP and Anr.* 2020(1) RCR (Criminal) 831 and *Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others* 2012(2) SCC 382, the involvement of accused in other criminal case cannot be the sole ground to deny him the concession of bail.

7. In view of the above, petitioner-Dinesh Sharma is ordered to released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

9. The petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

11.12.2023
Ajay Goswami

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