

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(212)

CRM-M-48825 of 2022
DATE OF DECISION:-28.03.2023

Kamal Singh

...Petitioner

vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Bipin Ghai, Senior Advocate, with
Mr. Paras Talwar, Advocate, &
Mr. Nikhil Ghai, Advocate, for the petitioner.

Mr. Sumit Jain, Additional Advocate General, Haryana.

Mr. Rakesh Kumar Lakhra, Advocate, for the complainant.

HARKESH MANUJA, J.

By way of present petition filed under Section 439 of the Code of Criminal Procedure, 1973, petitioner prays for grant of regular bail in case FIR No.009 dated 08.01.2022 under Sections 420, 465, 467, 468, 471, 506 of IPC registered at Police Station Manesar, District Gurugram.

The allegations against the petitioner as levelled in the FIR are that the complainant was defrauded by the son of the petitioner in collusion with few others and having approached the petitioner through one of the agents, threats of elimination were extended by the petitioner. It has also been averred that the petitioner always remained privy to the acts done by the main accuseds who happen to be his son and daughter.

Learned counsel for the petitioner submits that petitioner was arrested by the investigating agency on 22.03.2022 whereas, upon conclusion of the investigation, *challan* stands filed on 11.04.2022. He further submits that besides the allegations of having extended threats to the agents of the complainant, the only other thing to connect the petitioner

with the alleged offence is the transfer of an amount of Rs.39 Lakhs from the saving bank account of Parveen Yadav i.e. son of the petitioner to an account jointly maintained by the petitioner and his son. Learned senior counsel also points out that around 31 Lakhs out of the aforesaid amount came to be deposited on 02.09.2021, whereas, as per the allegations levelled in the FIR, the cheques pertaining to huge amounts were handed over by the complainant party to the son of the petitioner on 21.09.2021 and 03.11.2021 i.e. post deposit of the aforementioned Rs.39 Lakhs to the account being run by the petitioner and his son. He further submits that the petitioner is a retired army personnel of 59 years of age and has suffered incarceration for a period of almost one year by now and the trial is likely to take some time and the charges have not been framed so far particularly when the offences are even triable by the Magistrate. In support, learned counsel for the petitioner relies upon the decision made by the Hon'ble Supreme Court in case of **Sanjay Chandra Vs. Central Bureau of Investigation**, reported as (2012) 1 Supreme Court Cases 40. The relevant para No.46 as relied upon is reproduced hereunder:

“46.We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

On the other hand, learned State counsel submits that during the investigation, it has been found that an amount of Rs.39 Lakhs was deposited through three different bank accounts being maintained by the petitioner and besides it, it has also been found that the petitioner extended threats to the complainant party and their/its representatives under the name of his son Parveen Yadav by stating that he was working at D.I.G.

While opposing the prayer made in the petition, learned counsel for the complainant submits that petitioner always remained in active connivance with the main accused i.e. his son and daughter who cheated the complainant party and obtained the huge amount of money amounting to Rs. 150 Crores through various channels pertaining to allotment of some construction work in the “National Security Guard” Campus at Manesar. Learned counsel also submits that the amount of Rs.39 Lakhs which was deposited in the accounts of petitioner is yet to be recovered and the bail applications of other co-accused already stand dismissed by this Court vide order common dated 12.05.2022 passed in **CRM-M-17814-2022** titled as **Mamta Vs. State of Haryana & CRM-M-17892-2022** titled as **Rituraj Yadav Vs. State of Haryana** besides vide order dated 22.08.2022 passed in **CRM-M-23753 of 2022** titled as **Dinesh Sorkhi Vs. State of Haryana**. Learned counsel further points out that the special leave to appeal filed against both the aforementioned orders also stands withdrawn. Learned counsel also submits that besides the FIR in question four other FIRs on almost similar allegations have been recorded against the petitioner being FIR Nos.10 of 2022, 12 of 2022, 15 of 2022 and 25 of 2022, approximately pertaining to the same time period.

I have heard learned counsel for the parties and gone through the

paper book. I find substance in the submissions made on behalf of the petitioner.

Even if the allegations levelled against the petitioner are taken at its face value, only thing against the petitioner is that he extended threats to the representative of the complainant. Besides it, during investigation it has been found by the investigating agency that a sum of Rs.39 Lakhs was deposited in three different accounts being maintained by the petitioner. In this regard it can be found out from the paper book that out of the deposit of Rs.39 Lakhs which has been shown by the investigating agency, having been deposited in the accounts of the petitioner, majority sum of Rs.31 Lakhs was deposited on 02.09.2021 which is prior to the date of alleged handing over of the cheques by the representative of the complainant to the son of the petitioner which apparently shows that the majority sum out of Rs.39 Lakhs was never related to the amount later handed over by the complainant to the son of the petitioner or his other family members for the purpose of obtaining work orders for carrying out the constructions of housing project in NSG Campus at Manesar. Besides it, no other material has been referred to by the learned State counsel, so as to connect the petitioner with the alleged offence. In the present case, investigation already stands concluded with the filing of challan way back on 11.04.2022 and there are 90 witnesses cited by the prosecution and as such trial is likely to take some time. .

As regards the dismissal of bail applications filed by the other co-accused, vide orders dated 12.05.2022 and 22.08.2022 passed in CRM-M-17814-2022, CRM-M-17892-2022 and CRM-M-23753 of 2022, it can be most humbly pointed out that there have been specific and categoric

allegations of active involvement against those petitioners namely Mamta, Rituraj Yadav and Dinesh Sorkhi, in the present FIR who have allegedly connived with Parveen Yadav and assisted him while opening the forged accounts and also while withdrawing huge amounts deposited therein, for settling of those funds obtained from the complainant. Thus, dismissal of bail applications filed at the instance of those aforementioned co-accused cannot be treated to be fatal for considering the bail application of the petitioner on merits, against whom there is no such direct and categorical allegations of having assisted Parveen Yadav except for bald and vague allegations for knowing everything.

Above and beyond, the registration of other cases against the petitioner cannot be taken to be as the sole material consideration for the purpose of declining him the relief of bail. For the purpose of deciding the bail application in hand, the allegations levelled against the petitioner as levelled in the FIR in question have to be primarily seen and considered. The aforesaid view can also be derived from a decision made by Hon'ble Supreme Court in case of **Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and Another**, reported as (2012)2 Supreme Court Cases 382. The relevant para No.10 is reproduced hereunder:

“It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. 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.”

In view of the discussion made hereinabove, without commenting anything on the merits, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate.

However, nothing expressed hereinabove shall be construed as an expression on the merits of the case.

28.03.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No

whether reportable: Yes/No