

CRM-M-47532-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224

CRM-M-47532-2023

Date of decision: 25.09.2023

Varghese Sebastian

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Namit Khurana, Advocate for the petitioner.

Mr. Karan Sharma, DAG Haryana.

Mr. Sandeep Singh, Advocate for the complainant.

ARUN MONGA, J. (Oral)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.516 dated 24.06.2023, registered under Sections 406, 420, 467, 468, 471, 120-B IPC of the Indian Penal Code, 1860 (for short 'IPC') at Police Station City Karnal, District Karnal.

2. According to the prosecution's account, an FIR was registered on June 24, 2023, based on the statement of the complainant, TarunKathuria. He alleged that he operates a dairy farm near Maharana Pratap Chowk, Karnal, in partnership with AgilVerghese, a resident of Delhi, for the past 5 to 6 years. In April 2022, he expressed a desire to send his younger brother abroad, and his partner, AgilVerghese, introduced him to the petitioner and his partner, Rejin C, who were engaged in the business of facilitating overseas travel. Consequently, a deal was struck for Rs. 20 lakh. Subsequently, the petitioner obtained the necessary documents from the complainant's brother, along with an advance payment of Rs. 50,000. In August 2022, an offer letter for the complainant's brother to work at a Canadian company was sent to his mobile via WhatsApp, at

the petitioner's behest. Following this, from September 3, 2022, to March 3, 2023, the complainant transferred a total of Rs. 15,21,000 to Rejin C's account through AgilVerghese's account. In November 2022, the petitioner requested the original passport of the complainant's younger brother for visa application purposes. After obtaining the passport, the petitioner and his partner, Rejin, ceased answering the complainant's calls. In response, the complainant visited the petitioner's residence to reclaim his money. However, the petitioner's wife threatened to falsely implicate him. It was also reported that the petitioner's daughter had settled in Canada, and there was concern that the petitioner and his family, having defrauded the complainant of a substantial sum, might attempt to flee to Canada.

In this manner, the complainant alleged that the petitioner had swindled him of his hard-earned money. The petitioner neither returned his brother's original passport nor facilitated the issuance of the visa for his brother's travel to Canada. An investigation was subsequently initiated, leading to the petitioner's arrest on July 8, 2023.

3. Learned counsel for the petitioner contends that dispute between the parties has already been settled. Moreover, complainant has also got his statement recorded before the Magistrate in this regard. He stated therein that he has no objection in case petitioner is granted the concession of bail. On that premise, learned counsel argues that, in view of compromise arrived at between the parties, trial in all likelihood will result in acquittal of petitioner.

3.1 Moreover, there is nothing on record to show that petitioner has allegedly forged any documents of the complainant. Further submits that guilt of petitioner for the offences alleged cannot be determined at this stage, same is a matter of trial. Petitioner ought be accorded the concession of bail in view of compromise arrived at between the parties.

4. Learned counsel for the complainant also admits the factum of compromise. He submits that he has no objection in case petitioner is granted the concession of bail.

5. Per contra, learned State counsel opposes the bail petition and contends that petitioner has committed a serious offence. He further submits that petitioner and his co-accused suffered custodial statement admitting their complicity in the present case. In case, petitioner is granted concession of bail, there are chances of his fleeing.

6. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. On a Court query, learned State counsel, under instructions, submits that challan is likely to be submitted shortly. Investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation.

8. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are matter of trial. Trial is likely to take long time as it is proceeding at a snail pace. Whereas petitioner has already been languishing in jail for more than 02 months, being behind bars since 08.07.2023.

9. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. There is no probability of tampering with evidence as the same has already been seized by the investigating agency.

10. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime.

11. It is stated that petitioner is 60-year old person, retired from government service. Being a family man with clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.
12. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.
13. Accordingly, petitioner is ordered to be released on bail, in case not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned *Ilaqa*Magistrate/Duty Magistrate, as the case may be.
14. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
15. It is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned Court below shall proceed without being influenced with this order.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 25, 2023
Ajay

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