

208 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-49069-2023

Date of decision : 16.11.2023

DILBAGH SINGH

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. S.K. Bokolia, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

KULDEEP TIWARI.J. (ORAL)

1. The instant petition has filed under Section 439 Cr.P.C. for grant of bail in case of FIR No. 02, dated 22.04.2022 registered under Sections 419, 420, 467, 468, 471 and 120-B IPC at Police Station NRI Moga, District Moga.
2. The allegations as summarized by the learned Additional Sessions Judge, vide order dated 02.09.2023 read as under:-

“That present FIR was registered on the application moved by complainant Sharandeep Kaur by stating that she is resident of United States of America and she is serving in Department of Defence there. She along with Tarlochan Singh and Narinder Chawla are joint Owners in possession of land measuring 4 kanals comprising Khasra No.176//2/1/2, 2/2/28/2/2, 9, 12/1 Khata No.23/85/2750 as per jamabandi for he year 2002-03 situated at Village Moga Mehla Singh (as per

registered sale deed bearing Wasika No.9223 dated 09.01.2009. She and her father are owners of 3 kanals of land. Thereafter mutation was also sanctioned in their favour. They occasionally visited India Amrik Singh Hira used to look after their property. Few days ago, their neighbor asked Amrik Singh Hira for sale above said property and also told that he has seen some persons while visiting their property. Amrik Singh Hira came to know that some persons are trying to grab her property who disclosed this fact to her. On her instructions, Amrik Singh Hira checked the revenue record and got astonished to know that has been shown to have sold property to Gurwinder Singh son of Kirpal Singh on the basis of sale deed bearing Wasika No.2956 dated 28.10.2015 vide mutation No.27997. Amrik Singh Hira collected certified copy of above sale deed and came to know that it has been got registered in the year 2015 whereas she never visited in the year 2015. She never signed the sale deed and even the photograph appended on the endorsement of sale deed is not of her. Rather all these persons are culprits. In the said sale deed, by conniving and conspiring Harpal Singh son of Ajit Singh and Puran Singh, Lambardar stood as marginal witnesses and signed the sale deed. It has been shown to have scribed by Inderjit Singh. All these persons hatched a criminal conspiracy in order to grab her valuable property knowingly that she is permanent resident of America and cannot visit their property frequently. Thus, on the basis of above said forged and fabricated sale deed dated 28.10.2015, the accused persons managed to get mutation No.27997 sanctioned in favour of Gurwinder Singh in the revenue record. Now she came to know that above said persons further sold the said land

to some other persons, who are also the accused person in order to rotate a chain of title. She along with others is still owner in possession of their land. During enquiry, it was found that above said 4 kanals of land was sold by Surmukh Singh, being power of attorney of Gurwinder Singh, to Gautam Arora son of Rahul Arora, vide sale deed bearing Wasika No.1721 dated 22.07.2021 and mutation No.33706 was already entered in the name of Gautam Arora. Later on during interrogation of co-accused Surmukh Singh, accused/applicant was nominated in the case in hand vide DDR No.16 dated 07.01.2023”

3. Though, the custody certificate reveals that petitioner has faced incarceration for about 5 months 4 days, and that he is not involved in any other case, and that co-accused namely Harpreet Singh @ Bhumi, Jagtar Singh and Puran Singh Lambardar have already been granted regular bail by a co-ordinate Bench of this Court.

4. It is not under dispute that initially the beneficiary of the sale deed is one Gurwinder Singh. During investigation, it reveals that no such person in the name of Gurwinder Singh exists and in fact the real beneficiary is one Tirlok Singh as well as Harpreet Singh Bhumi.

5. Learned counsel for the petitioner submits that the petitioner is not named in the FIR, whereas, he has been roped in the instant FIR on the basis of a disclosure statement of co-accused. He further submits that he is behind bars since 14.06.2023 and therefore, has undergone incarceration for about 5 months and 04 days as on today. He further submits that the trial is at very initial stage and all the

offences are triable by the Judicial Magistrate First Class, therefore, the conclusion of trial will take long time.

6. Today, the learned State counsel during the course of the argument placed on record the custody certificate issued by the Superintendent, Central Jail Faridkot, which make revelations that the petitioner has undergone 5 months 4 days of incarceration as on today and he is not involved in any other case. The learned State counsel further submits that the present petitioner had attested the sale-deed being Lambardar of the Village. He further submits that the final report under Section 173 Cr.P.C. has already been filed before the learned Trial Court and thereafter the charges have been framed against the petitioner/accused and out of 18 witnesses cited by the prosecution, examination-in-chief of one witness has been completed.

7. “Bail is the Rule and Jail is an Exception”. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled **“State of Rajasthan V. Balchand alias Baliy”, 1977 AIR 2447, 1978 SCR (1) 535**. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

8. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

9. In “**Nikesh Tarachand Shah V. Union of India**”, (2018) 11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the

preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:*

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court,

the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict.

Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

10. Also, in **Siddharam Satlingappa Mhetre v. State of maharashtra, Criminal Appeal No.2271 of 2010**, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

11. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law.

12. Considering the fact that the petitioner has already faced incarceration for about 5 months and 04 days and is not involved in any other case and taking note of the fact that the instant case is triable by the Magistrate and completion of the trial will take long time couple with the custody period and the fact that the petitioner is willing to appear before the trial Court on each and every date, this Court deems it appropriate to enlarge the benefit of regular bail to the petitioner namely, Dilbagh Singh.

13. Therefore, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate, in case he is not required in other criminal case.

14. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

16.11.2023
monika

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No