

CRM-M-58151-2023

2023:PHHC:149831

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(225)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-58151-2023

Date of Decision: 23.11.2023

ANIL KUMAR TIWARI

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Navjot Singh, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

Mr. Vishal Garg Narwana, Advocate
for the complainant.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.28 dated 01.07.2023 registered under Sections 406, 420, 465, 467, 468, 471 IPC, 1860 at Police Station City Kurali, District Mohali, Punjab.

2. The present FIR came to be registered at the instance of Ramesh Kumar Garg son of Milkhi Ram with the allegations and he and his wife Poonam Garg had given a Special Power of Attorney to Anil Kumar Tiwari (petitioner). On the basis of the said power of attorney, the petitioner applied for the development of a colony in Kurali, SAS Nagar and for the said purpose, an application had been made to the MC, Kurali without the permission of the complainant-Ramesh Kumar Garg. The petitioner had carved out the plots in the colony received money from the purchasers who

had constructed their houses in the said colony. However, nothing was given to the complainant party.

3. The learned counsel for the petitioner contends that the allegations in the FIR are completely baseless and without merit. The dispute between the parties would be primarily of a civil nature. A civil suit had also been instituted against the petitioner. The power of attorney had been willingly executed in favour of the petitioner by the complainant and his wife for the purposes of colonization. The co-accused Vishal Tiwari, the son of the petitioner had been granted the concession of interim bail by this Court whereas Anjali Tiwari had been granted the concession of regular bail by the Trial Court. As the petitioner was a first-time offender, in custody since 04.07.2023, none of the 31 prosecution witnesses had been examined and the case was triable by the Court of a Magistrate, he was entitled to the concession of bail.

4. On the other hand, the learned State counsel along with the learned counsel for the complainant contend that the petitioner was in fact the main accused. The offence of cheating and forgery was clearly established against the petitioner. Therefore, he was not entitled to the concession of bail. They, however, concede that the petitioner was a first-time offender, in custody since 04.07.2023, none of the 31 prosecution witnesses had been examined so far and that the case of the petitioner was triable by the Court of a Magistrate.

5. I have heard the learned counsel for the parties.

6. This Court in the case titled as ***Maninder Sharma Vs. State Tax Officer, State, Mobile Wing, Jalandhar, Punjab bearing CRM-M24033-2021(O&M) Decided on 31.08.2022*** has held as under:-

“Therefore, broadly speaking (subject to any statutory restrictions contained in Special Acts) , in economic offences involving the IPC or Special Acts or cases triable by Magistrates once the investigation is complete, final report/complaint filed and the triple test is satisfied then denial of bail must be the exception rather than the rule. However, this would not prevent the Court from granting bail even prior to the completion of investigation if the facts so warrant.”

7. The veracity of the prosecution case against the petitioner shall be adjudicated upon during the course of the Trial. Admittedly, the petitioner is stated to be a first-time offender, in custody since 04.07.2023 and none of the 31 prosecution witnesses have been examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. There are no serious apprehensions expressed by the State that the petitioner would abscond from justice, tamper with the evidence or influence witnesses if granted the concession of bail. Therefore, in this situation, the further incarceration of the petitioner is not required.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Anil Kumar Tiwari son of Lakshmi Chand Tiwari is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform

in writing each time that he is not involved in any other crime other than the present case.

10. The petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

23.11.2023
JITESH

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