

CRM-M-59772-2023 (O&M) 1

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-59772-2023 (O&M)

Date of Decision: 04.12.2023

BALWINDER SINGH

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lakshay Bector, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG Punjab.

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. 25 dated 20.05.2018 registered under Sections 420, 406 and 34 of the Indian Penal Code at Police Station Pojewal, District SBS Nagar.

2. FIR was lodged on the basis of statement made by complainant- Kanta Devi on the allegations that she had a settlement with Balwinder Singh Travel Agent resident of village Kubba, Tehsil Samrala, District Ludhiana for sending her son Sureh Kumar to Portugal for a sum of Rs. 5½ lacs. He took Rs. 2,20,000/- in cash himself and deposited Rs. 3,30,000/- in two different accounts of two different persons. In July 2017 he took my son from the house. Till date her son has not reached Portugal. The aforesaid agent instantly kept her son in Georgia for 5 months and now for the last one month he is in Turkey. Aforesaid agent left her son in lurch and now he came back to India and refused to return her amount.

3. Learned counsel for the petitioner inter alia contends that the petitioner has given a loan of Rs. 2,00,000/- to the complainant as the

son of the complainant used to reside with the petitioner in Georgia. The complainant in order to discharge her liability, issued two cheques to the petitioner for Rs. 1,50,000/- and Rs. 50,000/- respectively on 17.02.2018. The said cheques were dishonoured and the petitioner filed a complaint under Section 138 of Negotiable Instruments Act against the complainant and as such, as a counter blast to pressurize the petitioner, the present FIR was lodged. Learned counsel for the petitioner further contends that vague allegations have been levelled in the FIR, the petitioner is behind the bars since 31.07.2023 and the co-accused has already been granted regular bail.

4. Per contra, learned State counsel opposes the prayer for grant of bail to the petitioner on the ground that petitioner is involved in two more cases, so he does not deserve the concession of regular bail.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is behind the bars since 31.07.2023 and the trial of the case has not made any progress as none of the prosecution witnesses have been examined so far. 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. Further, in view of the law laid down by Hon’ble Supreme Court in **(i) Prabhakar Tiwari Vs. State of UP and Anr. 2020(1) RCR (Criminal) 831** and **(ii) Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others 2012(2) SCC 382**, the involvement of the accused in other cases cannot be a ground to deny him the concession of bail. In view of the same, petitioner- Balwinder Singh 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.

7. 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.

8. The petition is allowed.

(HARPREET SINGH BRAR)
JUDGE

04.12.2023
Ajay Goswami

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