

CRM-M-61200-2023 (O&M) 1

215 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-61200-2023 (O&M)

Date of Decision: 11.12.2023

MANOJ KUMAR

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tarun Yadav, Advocate and
Miss Parul, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

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. 05 dated 02.01.2020 registered under Sections 406, 420, 506 and 34 of Indian Penal Code at Police Station Sadar Kanina, District Mahendergarh.

2. Present FIR was lodged on the basis of statement made by complainant-Shyam Lal on the allegations that the accused persons have allured the complainant for arranging a Hotel on lease and for securing job for his son. The son of the complainant paid a sum of Rs. 11,07,000/- and the accused has a culpable intention to cheat right from the beginning. The site in question, which the petitioner had shown to the complainant was found to be owned by some other person. When the complainant started work there, the real owner had stopped him by saying he had never given this site on lease either to Manoj or his wife Suman. The complainant asked the accused persons to return Rs. 3,00,000/- and the accused persons induced the complainant by saying

son employed in Group D jobs in Parliament.

3. Learned counsel for the petitioner inter alia contends that the offences under which the FIR has been lodged are punishable for a maximum sentence up to 07 years. Learned counsel further submits that initially the petitioner was arrested on 15.01.2020 and thereafter due to Covid pandemic, he was released on the general directions issued by this Court and now he is in custody since 06.09.2023. The Investigating Agency has declared the other accused as innocent in the final report under Section 173 Cr.P.C.

4. Per contra, learned State counsel opposes the prayer for grant of bail to the petitioner on the ground that the culpable intention of the petitioner to cheat the complainant from the beginning is clearly established and the complainant is yet to be examined by the trial Court and if released on bail, the petitioner may influence the material witnesses.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that the petitioner is behind the bars for more than 03 months. The prosecution has cited 15 witnesses and none has been examined so far. Thus the trial of the case may take long time to conclude. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India.

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. In view of the above, petitioner- Manoj Kumar 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

11.12.2023
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No