

AKSHAY VERMANI

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Neeraj Saini, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Dr. Sumati Juna, Advocate for the complainant.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 439 of Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.0088 dated 20.03.2022 registered under Sections 120-B, 408 and 420 of Indian Penal Code (later on Sections 467, 478 and 471 of IPC were added) at Police Station Sector 50, District Gurugram.

2. The present FIR was lodged on the allegations that one Akshay Vermani (petitioner herein) was employee of the complainant company and he was having custodial and overall in-charge of all the user names and passwords related to net banking, official mobile phone, office lockers and keys, cheque books, employee records, books of accounts etc. of the complainant company. However, the complainant company came to know that he got transferred an amount of Rs.68,56,335/- in his personal account from two accounts of the complainant company. The petitioner has embezzled the amount dishonestly.

Some of the amount has been transferred by the petitioner in the account of his wife and father and they are the beneficiaries of this fraud.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has not committed any cheating with the complainant and he has been made a scapegoat. The entire case of the prosecution is based on documentary evidence and the timeline of the transfer of money would indicate that it cannot be believed that the Managing Director and other officials of the company did not make any complaint for such a long period for any online transaction from the account of the company. The one time password received by the Director of the complainant company on his mobile number and each and every transaction of withdrawal and deposit in the bank accounts of company was well within the knowledge of the Managing Director of the complainant company. The petitioner has already suffered the incarceration of more than one year and the investigating agency has already concluded the investigation.

4. Per contra, learned counsel for the complainant vehemently opposes the grant of regular bail to the petitioner on the ground that huge amount is involved, which has been illegally stipend out by the petitioner and his family members are beneficiaries of this embezzlement and keeping in view the serious allegations against the petitioner, he does not deserve the concession of regular bail.

5. Learned State counsel, opposes the prayer of the petitioner on the ground that prosecution has collected sufficient material to indicate the complicity of the petitioner in the alleged offence.

6. 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.”

7. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner has suffered the incarceration of 01 year, 09 days and the investigating agency has concluded the investigation and submitted the final report under Section 173 Cr.P.C. on 29.11.2022. Trial of the case has not made any progress yet as out of 18 witnesses cited by the prosecution, only one has been examined so far. Culpability, if any, would be determined at the time of the trial. No useful purpose would be served by further detention of the accused-petitioner. Keeping the petitioner in further detention, without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

8. Keeping in view the facts and circumstances of the case, the present petition is allowed without commenting upon the merits of the case lest it may prejudice the outcome of the trial and the petitioner-Akshay Vermani is ordered to be released on regular bail during trial on bail bonds/surety bonds already furnished to the satisfaction of the Illaqa Magistrate/Duty Magistrate in compliance of order dated 16.10.2023 passed by this Court and order dated

16.10.2023, granting interim bail to the petitioner, is hereby made absolute.

Petitioner would attend the trial on each and every date.

9. 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.

January 18, 2024
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No