

2024:PHHC:013772

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217

CRM-M-4227-2024

Date of Decision :February 01, 2024

MUSTAKEEM ALIAS DEMA

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Saleem Ahmed, Advocate
for the petitioner.

Mr.Abhinash Jain, DAG, Haryana.

KULDEEP TIWARI. J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.40, dated 18.09.2023, under Sections 419, 420, 467, 468, 471 and 120-B of the IPC, registered at Police Station Cyber Crime, Nuh, District Nuh.

ALLEGATIONS AGAINST THE PETITIONER

2. The gist of the allegations, as recorded by the learned trial Court concerned, while declining the bail to the petitioner, vide order dated 19.12.2023, reads as under:-

“2. The case of the prosecution in brief is that on 18.09.2023 police received secret information that the present applicant used to cheat the public persons by making calls from fake mobile phone Sims and by showing photographs of some girls. On the basis of secret information, the applicant was arrested on the basis of signal given by secret informer. On personal search, two mobile phones were recovered from the applicant. In one mobile phone, two Sims numbers 9050254533, 8708268597 were found. One Whatsapp account no. 7027830572 with profile name as "Priya" and photo of a girl was also found in the mobile phone. Some obscene chats regarding providing of girls for sex and some video clips were also found in his mobile phone. One

Phonepe account was found connected with mobile phone no. 8708268597. On checking some suspected transactions, obscene photos, obscene videos were also found in the mobile phone. Two Apps namely "Temp-mail" and "Singapore VPN" were also found installed in the mobile phone.

3. In the second mobile phone recovered from the applicant, one mobile Sim no. 7027830572 and whatsapp account no. 8708268597 were found. Three Apps namely "Separate Chat live", "Temp-mail" and "Singapore VPN" were found installed in the said mobile phone. The mobile phone was got checked from Cyber Cell and it was found that mobile phone no. 7027830572 is in the name of Sanjay son of Kullu resident Murthal, District Sonipat."

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

3. Learned counsel for the petitioner submits that no fake sim card was recovered from the petitioner, whereas, the alleged recovered mobile phone was forcibly implanted upon the petitioner.

4. He further submits that there is no complaint made by any victim, who was cheated by the present petitioner, and in the absence of any complaint by any of the victim, no offence whatsoever, under the provisions of Section 420 IPC is made .

5. He next submits that all the offences mentioned in the FIR are triable by a magistrate, and conclusion of the trial would take long time.

6. He further submits that the petitioner has already undergone a custody of approximately 4 ½ months as on today, and the trial is in midway which would take long time in its conclusion.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. *Per contra*, the learned State counsel opposes the asked for relief of grant of regular bail, on the ground that, the instant FIR was registered on dated 18.09.2023, on a secret information that the

petitioner/ accused used to cheat the public by making fake calls from fake mobile numbers/sim cards and by showing photographs of some girls.

8. He further submits that during investigation, the petitioner was arrested, and from his personal personal search, two mobile phones were recovered, in one mobile phone, two Sims numbers 9050254533, 8708268597 were found and one Whatsapp account no. 7027830572 with profile name as "Priya", and photo of a girl was also found in the said mobile phone. Further, some obscene chats of providing girls for sex, and some video clips were also found in the said mobile phone. One Phonepe account was also found connected with the said mobile phone no. 8708268597. Further, he submits that on checking the same, some suspected transactions, obscene photos, obscene videos were also found in the mobile phone, and two Apps namely "Temp-mail" and "Singapore VPN" were also found installed in the said mobile phone.

9. Therefore, the petitioner does not deserve the concession of regular bail as the petitioner has been indulged in the activity of cheating innocent persons.

10. He also files a custody certificate *qua* the petitioner, which is taken on record, and, it reflects that the petitioner has suffered incarceration of 4 months and 13 days as on today, and, he is not involved in any other criminal case.

11. Learned State counsel, on instructions imparted to him by HC Dinesh, informs this Court that the final report has already been filed

on dated 08.12.2023, but the charges are yet to be framed, and there are total 13 prosecution witnesses cited by the prosecution in the final report.

ANALYSIS

12. *“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 Baliay”, 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.

13. 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.

14. 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 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.”

15. 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.

16. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled and legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

FINAL ORDER

17. Considering the fact that the petitioner has suffered incarceration of 4 months and 13 days, and as per his antecedent, he is not involved in any other criminal case, coupled with the fact that no victim has come forward, alleging that he has been cheated by the present petitioner, and, it is a magisterial trial which is yet to begun as charges have yet not been framed, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, 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.

18. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as are involved

herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court. Moreover, anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

February 01, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No