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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4802-2024 (O&M)
DATE OF DECISION: 05.08.2024

HARSH YADAV ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. GPS Ghuman, Advocate and
Mr. Atul Kumar, Advocate for the petitioner(s).
Mr. J.S. Rattu, DAG, Punjab.
Mr. Abhishek Shah, Advocate for the complainant.

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SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in case FIR No. 0072, dated 04.08.2023, under Sections 420/465/467/468/471 IPC, 1860 and Section 66(D) of Information Technology Act, 2000 registered at Police Station Jodhewal, District Police Commissionerate, Ludhiana.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

> *'At this time application PGD No. 198067/201171 dated 18-7-2023 from Davinder Singh son of Baldev Singh resident of House No. 14-15, Green City Tharike Ludhiana, was received through Post for registration of FIR in the office of Commissioner Police Ludhiana. The contents of the application is as under, Sir, Commissioner of Police, Ludhiana. Subject: Misappropriation of Funds by the Company. I, Davinder Singh Sindhu Director M/S Davinder Sandhu Impex Pvt.Ltd. Gehlewal am giving complaint against HR Harsh Yadav of our*

company, who was working for the last two years, whose job included making the salary of the laborers and depositing the salary in their account was his work. HR Yadav by opening the fake account of the company misused the money of the company This person ran away from his house along with his family from 17-7-2023 and all his mobile phones have been switched off. Please seal his bank account and help us in tracing him. Yours sincerely Sd/- Davinder Singh Sidhu for Davinder Sandhu Impex Pvt. Ltd. It is requested that the said application be got investigated by Assistant Commissioner of Police P.B.I Economic Offence and Cyber Crimes, Ludhiana. According to the investigation report, the said application was submitted by Davinder Singh son of Baldev Singh resident of House No. 14-15, Green City, Tharike, Ludhiana, by the HR of his firm Harsh Yadav, for taking legal action regarding committing fraud. During the investigation by joining applicant Davinder Singh in the inquiry statement as recorded. Who recorded in his statement that from the year 2021 Harsh Yadav son of Mal Singh resident of House No. 54, Jain Colony, Bhamia Road, Ludhiana, was working as HR in our company. Who used to make the salary of the employees working in the company after getting audited by the Production Managers of the company. I used to sign the bills prepared by Harsh Yadav, on believing him. After that the bill by sending in the State Bank of India Branch Sunder Nagar, Ludhiana, the money was transferred to the accounts of all the employees of the company. That now, I have to know that after conducting an audit from Harsh Yadav from Production Managers, Harsh Yadav again put the fake bank accounts opened by him in a fake list and again prepared bills from me with the fake signature of the production manager has been signing. So far Harsh Yadav has put the details of his fake accounts in the list have defrauded me by fraudulently obtaining a total of Rs. 1,22,33000/-. Regarding which I am submitting a copy of the detailed information. Apart from this I also want to mention that Harsh Yadav has also prepared his fake Aadhaar cards. Whose photocopy I also submitted before you. Therefore an appropriate legal action be taken against Harsh

Yadav and I be provided justice. For joining Harsh Yadav in the investigation a summon was sent to his house No.54, Jain Colony, Bhamia Road, Ludhiana and on rented house No.19, Street No.03, Chandigarh Road, GTB Nagar, Mundian Kalan, Ludhiana. Where Mita Sharma stated that Harsh Yadav has sold the house no.54, Jain Colony, Bhamian Road, Ludhiana to her at about 4 years ago. After going to Harsh Yadav's rented house No.19, Street No. 03, Chandigarh Road, GTB Nagar, Mundian Kalan, Ludhiana, where the person present told that 4-5 days ago, Harsh Yadav had gone somewhere from his house along with his family. Apart from this, Harsh Yadav's mobile numbers 83604-94708 and 70878-21092 were also contacted. Which are coming switched off. From which it is clear that Harsh Yadav after defrauded Davinder Singh deliberately gone somewhere. Due to which it is not possible to join Harsh Yadav in the investigation. During the investigation, the application submitted by Davinder Singh of his firm Davinder Sandhu Impex Pvt. Ltd. SBI Bank Account No. 10202393134 and SBI Bank Account No.10202386252, from the perusal of the statement, it is found that from the accounts of applicant Davinder Singh's firm Davinder Sandhu Impex Pvt Ltd. from Kotak Bank to account No. 0045340314, 2545793911, 874623857, 3847038151, 3847038168, 5747220285, 5747220278 5747165692, Bank H.D.F.C. the in and Account No.50100317367719 and 50200074966285 and Fino ank and No.20257723743 Account account No.20025707343 total Rs. 1,22,33,000/- have been found transferred. Regarding which the record was obtained from Kotak Bank, H.D.F.C Bank and Fino Bank, which is also enclosed. During the investigation, records were obtained regarding Kotak Bank account numbers 0045340314, 2545793911, 874623857, 3847038151, 3847038168, 5747220278 5747165692, and 5747220285. Which as per record is registered in the account number 0045340314 of Harsh Yadav resident of house number 54, Bhamian Road, Jain Colony, Ludhiana, mobile number 76962-10611 and gmail I.D. registered with harsh1786yadav@gmail.com. Account No. 2545793911 is registered in the name of Rajwant Kaur Resident of Street No.2, *Chandigarh Road, Near Rekhi Ram Sons, Ludhiana, with Mobile No. 98776-55689. Account No. 8746238527 is registered in the name of Balwinder Kaur resident of G-7, Guru Nanak Dev Nagar, Ludhiana with mobile No. 83604-94708 and G-mail Id Harsh 1786yadav@gmail.com. Account No. 3847038151 is registered in the name of Savinder Kaur resident of G- 7, Guru Nanak Dev Nagar, Ludhiana with mobile No. 99150-10640 and G-mail Id harsh1786yadav@gmail.com. Account No.3847038151 is registered in the name of Maya R/o G-7, Guru Nanak Nagar, Ludhiana, with mobile No.97818-10611. Account number 5747165692 is registered in the name of Simranjit Kaur, resident of G-7, Guru Nanak Dev Nagar, Ludhiana, with mobile number 99885-50618. Account number 5747220278 is registered in the name of Kulwinder Kaur resident of G-7, Guru Nanak Dev Nagar, Ludhiana, with mobile number 95017-01720. Account number 5747220285 is registered in the na deme of Jasveer Kaur resident of G-7, Guru Nanak Dev Nagar, Ludhiana, with mobile number 84270-54217. That record of the above attached mobile numbers 76962- 10611, 98776-55689, 83604-94708, 99150-10640, 97818-10611, 99885-50618, 95017-01720 and mobile No.84270-54217 with banks were obtained. That according to record mobile No.76962-10611, 83604- 94708 and 97818-10611 is registered in the name of Harsh Yadam son of Mal Singh resident of H ouse No.54, Jain Colony, Bhamian Road, Ludhiana. Mobile number 98776-55689 is registered in the name of Ramandeep Singh son of Pradeep Singh resident of House No.97, Street No. 2, Mundian Kalan, New Guru Nanak Nagar, 33 Foota Road, Ludhiana. Mobile number 99150-10640 is registered in the name of Davinder Sandhu's firm. Regarding which Davinder Sandhu's firm submitted the authority letter that mobile number 99150-10640 was issued to Harsh Yadav working in their firm. Mobile No. 84270-54217 is registered in the name of Vishal Singh son of Sandeep Singh resident of House No. 3750, Street No.15, Ward No.19, New Madhopuri, Ludhiana. Apart from this, the records of mobile numbers 99885-50618 and 95017-01720 have not been obtained. During the investigation, records regarding these* *numbers should be obtained and action be taken as per the law. During the investigation of HDFC account number 50100317367719 and 50200074966285 the record was obtained from the HDFC bank. According to record the account number 50100317367719 is registered in the name of Harsh Yadav son of Mal Singh resident of House No.54, Bhamian Road, Jain Colony, Ludhiana, and account number 50200074966285 is registered in the name of Harsh Yadav son of Mal Singh resident of House No.54, Bhamian Road, Jain Colony Ludhiana. That according to record No.20257723743 is registered in the name of Pinki Yadav resident of 82, 02 Jain Colony, Bhamian Kalan, Ludhiana, with Mobile No.78887- 61103. Account No.20025707343 is registered in the name of Harsh Yadav resident House No.54, Jaiin Colony Bhamia Road, Ludhiana with mobile No90241-79767. Upon this the record of mobile NO.78887-61103 was obtained. That according to mobile No.78887-61103 is registered in the name of Pinki Yadav wife of Harsh Yadav resident of House No.82, Gali No.2, Jain Colony, to mobile Bhamia Kalan Ludhiana. With regard No.90241-79767 the record was not obtained. During inquiry with regard the to I.D. of harsh 1786yadav@gmail.com a record was obtained from google that according to which the above gmail ID registered with mobile number 76962-10611. In this regard, a record was obtained regarding mobile number 76962-10611. According to which the record mobile number 76962-10611 is registered in the name of Harsh Yadav son of Mal Singh resident of house number 54, Bhamian Road, Jain Colony, Ludhiana. During the investigation, it was found that Harsh Yadav had given his mobile number and Gmail ID to the above bank account have been opened in the name of different persons by using the same and in these bank accounts Harsh Yadav fraudulently obtained money from Davinder Sandhu Impex Pvt Ltd. Besides this the amount has also been obtained by Harsh Yadav from the account of her wife Pinki Yadav from her Fino bank account No. 20257723743. From till date investigation, on perusal the statement obtained, from the documents and the record obtained from different banks it has been found that Harsh Yadav* *resident of House No.54, Jain Colony, Bhamia Roa, Ludhiana, is doing service in the Unit of The Gehlewal Ludhiana, as H.R. of Davinder Sandhu Impex Private Limited, Gurunanak Dev Nagar, Ludhiana. After getting the monthly salary list of the employees working in this unit signed by Production Manager Amarjit Singh, he added the details of bank accounts in that list by using fake signature of Production Manager Amarjit Singh and using fake Aadhaar cards, in those accounts, from the year 2022 to June 2023, a total of Rs. 1,22,33,000/- (One Crore Twenty Two Lakh Thirty Three Thousand) has been fraudulently obtained and defrauded the applicant Devinder Sandhu. In the first instance, Harsh Yadav, resident of House No. 54, Jain Colony Bhamian Road, Ludhiana, fraudulently obtained Rs. 1,22,33000/- by committing fraud with the applicant offence under section 420/465/467/468/471 IPC and 66-D I.T. Act is come to light. Besides this, if any role of any other person is revealed during the investigation, then appropriate action also be taken against him as per Jaw. Recommendation:- If approved, then against Harsh Yadav son of Mal Singh, resident of House No. 54, Jain Colony, Bhamian Road, Ludhiana, under section 420/465/467/468/471 of Penal Code and 66-D I.T. Act for registration of the case SHO P.S. Basti Jodhewal, Ludhiana be requested to pass an order. Sd/- Deputy Commissioner of Police, Local, Ludhiana dated 28.7.2023. Upon this Hon'ble Commissioner of Police Ludhiana written to SHO Jodheal to register as case and investigate. Today on receipt of application at Police Station, above case under above offence got registered against the above accused. Original application alongwith enclosed documents alongwith copy of FIR for further investigation I take myself. Control Room be informed through Wireless.*

Closure of Rapat number 27 at 2:00 PM.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He submits that the petitioner has been in custody for last almost one year and investigation is complete as challan stands presented on 06.11.2023 and charges have been framed on 07.12.2023. He has further argued that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 11 Prosecution Witnesses, none has been examined so far.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 11 months, 18 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that that the allegations against the petitioner are serious in nature but is not in a position to controvert the submissions made by counsel for the petitioner.

On behalf of the Complainant

Learned counsel for the complainant has vehemently opposes the prayer made in the petition by stating that the petition being a boss of the other co-accused will definitely intimidate the other witnesses and on that account, he seeks dismissal of the instant petition.

4. **Analysis**

From the above case it can be culled out the petitioner has already suffered sufficient period in custody i.e. 11 months and 18 days days and the dispute is related to embezzlement within a particular company and it was not an offence against society and even otherwise the candid admission of learned State Counsel would come handy for this

Court to accept the petition that is there is no chance of recovery of alleged amount embezzled by the petitioner and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan stands presented on 06.11.2023 and charges have been framed on 07.12.2023**,** out of 11 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period**.**

Reliance can be made upon the judgment of the Apex Court rendered in "***Dataram versus State of Uttar Pradesh and another", 2018(2) R.C.R. (Criminal) 131***, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

> *"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.*
>
> *3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise*

of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman

> *Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658*
> *6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*
> *7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."*

Therefore, to elucidate further, this Court is conscious of the basic fundamental law that right to speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in "***Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna", (1980) 1 SCC 98.*** Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

Since the main case has been allowed, pending application(s), if any also stands disposed of.

(SANDEEP MOUDGIL)
JUDGE

05.08.2024
anuradha

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