

2024:PHHC:041102

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

136

CRM-M-5914-2024
Date of Decision : March 21, 2024

SOHAN SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Akshay Chadha, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, prayer is made for quashing of order dated 11.7.2023 (Annexure P-8) passed by the learned Additional Sessions Judge, Ludhiana, whereby, criminal revision No. 598 of 2023 was dismissed and the order dated 19.5.2023 (Annexure P-7) was upheld, whereby, the application of the petitioner for the grant of regular bail under Section 437(6) Cr.P.C. in FIR No. 91 dated 31.5.2019, under Sections 408 and 409 IPC, registered at Police Station Tibba, Police Commissionerate Ludhiana, District Ludhiana was declined by the learned trial Court concerned.

2. Learned counsel for the petitioner submits that the learned trial Court concerned while dismissing his application filed under Section 437(6) Cr.P.C. has not adhered to the statutory requirement and rather dismissed the application on merits. While drawing the attention of this Court towards the provisions of Section 437(6) Cr.P.C., he submits that

the learned trial Court concerned was required to record the reasons for not releasing him on regular bail after 60 days of framing of charges. However, no such reasons has been assigned/mentioned by the learned trial Court concerned, despite the fact that 60 days have already been lapsed after framing of charge and only five prosecution witnesses have been examined till date. He further submits that though the revisional Court has touched the issue of Section 437(6) Cr.P.C. and upheld the order passed by the learned trial Court concerned, but even that reasons assigned could not pass the test of legality, therefore, it requires interference of this Court.

3. Before this Court proceeds to examine the legality of the orders passed by the Courts below, let us examined the allegations for which the present petitioner is facing trial.

4. The petitioner is alleged to be the President of the Co-operative Society and during audit of the Society by the auditing team, so constituted vide order dated 24.9.2018 of Deputy Registrar of the Society concerned, it was found that there is a difference of Rs.10,40,000/- in the accounts and this amount was withdrawn from Ludhiana Central Co-operative Bank, Tibba, through six cheques during the period between 25.4.2017 to 30.5.2017 and there is no entry made in the cash book of the Society concerned, in respect of the amount taken out through these cheques, nor any vouchers are there in the record of the Society concerned. Apart from this, the amount which has been taken out from the saving account of the Society, the signatures of President Sohan Singh, Society Member Pargat Singh, Society Member Jasbir Singh and

Secretary Jagdev Singh are present on those cheques. Subsequently, President of the Society Sohan Singh had deposited the amount of Rs.1,40,000/- taken out by him through cheque No.10172 dated 30.5.2017. Finally, the audit team concluded that the present petitioner, (President of the Society) and other office bearers of the Executive Committee has infact misused their position and embezzled Rs.9 lacs from the saving account of the Society for their personal use.

5. Learned counsel for the petitioner submits that the issue was under consideration before the Court of Sub Registrar, Co-operative Society, Ludhiana, whereby, the following observation has been made:-

“That after hearing both sides and perusing the record, I have come to the conclusion that the executive society of Tibba Multi Purpose Cooperative Society,LTD, Tibba, Teh, and District Ludhiana was removed because secretary Jagdev Singh has embezzled funds of the cooperative society. There is no direct allegation alleged against the GRAWA executive committee The case civil against Jagdev Singh is prepared by the Assistant Registrar, Cooperative Societies, Ludhiana, East Besides this The property of Gagdev Singh is attached with the name of society, therefore the order vide 187-92 dated 23.01.2019 passed the Assistant Registrar, Cooperative Societies, Ludhiana, East are set-aside. The Executive Committee is reinstated. The executive Committee is directed to ensure the appropriate action be completed against secretary Jagdev Singh.”

6. In pursuance of the observation made by the Court of Sub Registrar of the Society concerned, the Deputy Registrar of the Societies through its order dated 29.5.2019, directed to register FIR only against Secretary Jagdev Singh. He further submits that there was no occasion for the investigating agency to involve the present petitioner

in the instant FIR, as the concerned authority in their *quasi* judicial order held Jagdev Singh to be the guilty for embezzlement. He further submits that the petitioner is behind bars since 29.8.2022.

7. Learned State counsel has opposed the asked for prayer of regular bail on the ground that the petitioner is a habitual offender and he is involved in ten more cases. He further submits that in one case he has earned acquittal, in two cases, cancellation reports have been filed by the investigating agency, and in one case investigation is pending, in one case, the challan has already been filed and in five cases, he is facing trial. Learned State counsel on instructions imparted to him by ASI Baljeet Singh, further informs this Court that after investigation, final report has been filed on 29.11.2022 and charges have been framed on 23.12.2022 and out of total 17 cited witnesses, 5 have been examined so far and now the next date fixed before the learned trial Court concerned is 22.3.2024.

8. Faced with the above difficulty, the learned counsel for the petitioner has submitted that the petitioner is infact facing trial only in three cases and in other cases he has already earned acquitted or he is not arraigned as an accused and there is no case which is of similar nature pending against the present petitioner.

9. This Court has also examined the impugned orders.

10. The learned trial Court has not recorded any reasons for not releasing the petitioner on bail despite lapse of 60 days after framing of charge. Though the revisional Court has assigned the reasons for decling the relief under Section 437(6) Cr.P.C., the petitioner but the same are not

plausible. At this stage, it is

CRM-M-5914-2024

-5-

relevant to read Section 437(6) Cr.P.C.:-

“(6)If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail, to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.”

11. The perusal of the above Section makes it clear that it is statutory duty upon the Magistrate to record reasons while declining the bail application filed under this Section. The reasons should be based upon some cogent material. The same cannot be based upon mere assumption and presumption.

12. Be that as it may, considering the fact that the petitioner has suffered sufficient incarceration, as he is behind the bars since 29.8.2022 and all the offences in which the petitioner is facing trial, are triable by the learned Judicial Magistrate 1st Class, concerned and only 5 witnesses have been examined till date, out of total 17 cited witnesses and the conclusion of the trial would take a long time, therefore, the instant petition is **allowed** and the impugned order dated 11.7.2023 (Annexure P-8) passed by the learned Additional Sessions Judge, Ludhiana and the order dated 19.5.2023 (Annexure P-7) passed by the learned Judicial Magistrate 1st Class, Ludhiana are set-aside and the petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty

Magistrate.

CRM-M-5914-2024

-6-

13. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

March 21, 2024
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(KULDEEP TIWARI)
JUDGE

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