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

CRM-M-6252-2024
Date of decision: 28.08.2024

Sunder Singh alias Sunder Tomar alias Sunder Singh
.... Petitioner

Versus

State of Haryana .... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. A.K.Saini, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

Mr. Kamal Mor, Advocate for the complainant.

<u>GURBIR SINGH, J.</u>

1. Prayer in this petition filed under Section 439 of Cr.P.C for grant of regular bail to the petitioner in FIR No.409 dated 28.09.2022 under Sections 120-B, 406 and 420 of IPC registered at Police Station Sadar, Hansi, District Hisar (further added Sections 467, 468 and 471 of IPC at the time of presentation of final report under Section 173 of Cr.p.C and further added Sections 3 and 4 of Haryana Protection of Interest of depositors in Financial Establishment Act, 2013 and under Sections 3, 4, 5 & 6 of the Price Chits and Money Circulation Schemes (Banning) Act by the special investigating team on hearing of application under Section 323 of Cr.P.C filed by the complainant.

2. Brief facts as culled out from the petition are that the case has been registered on the complaint filed by Ram Chandra Yadav son of Gulab Singh. It is alleged in the complaint the complainant used to do organic farming at Jind and met co-accused, namely, Subhash Sihag and Sunder Singh. In the month of July 2019, co-accused, namely, Subhash Sihag and petitioner came in his Farm House and agreed to purchase organic wheat. They paid the price and took the purchased wheat. The co-accused and the petitioner again visited his farm house and asked to invest money in Herbal Raja Industry Limited to receive profits. On their assurance, the complainant gave a sum of Rs.7,50,000/- to the accused in presence of Om Prakash, Manjeet Numberdar, Ramphal and Vedpal. Thereafter, the accused persons cleared the account of the complainant and returned the total invested amount. After some time, accused persons again met the complainant and asked him to invest Rs. 25 lacs in Herbal Raja Gaubhakti Industry Ltd. to get double of the amount after one year and co-accused, namely, Jaipal Jangra presented himself as Managing Director, petitioner-accused, namely, Sunder Singh as CMD, co-accused Subhash Sihag, Anil, Sumender and Rajesh Atri as Directors of the said firm. The complainant in the presence of the witnesses gave Rs.22,50,000/- to accused persons. It is further alleged that co-accused Subhash Sihag and Sunder Singh also fraudulently obtained Rs.10 lacs from the complainant on the pretext to provide job to Karan Singh and Manoj (relatives of the complainant) in Delhi Metro and accused persons also gave two cheques to him with the

assurance that if the job is not provided to his relatives before 15.02.2021 then he would get his money back by presenting those cheqeus in the bank. When no job was provided to the relatives of the complainant, he presented both the cheques in the bank, which were returned dishonored by the bank. When he talked with the accused persons, then they obtained back both the cheques and again assured to provide job to his relatives. Again on the assurance of accused persons, complainant and his family members gave more amounts to the accused persons to invest in Crypto Currency and Elite Coin. The accused persons in connivance with each other, fraudulently obtained Rs.80,50,000/- from the complainant and his family members and when he demanded his money back, accused persons refused and threatened to kill him and his family members.

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 29.09.2022. The petitioner earlier filed the bail application and the same was dismissed as withdrawn by the petitioner on 02.11.2023 (Annexure P-13) with liberty to file afresh. He further submits that the complainant-Ram Chander invested a total sum of Rs.16,90,000/- on six different dates and in his investment returns, he had already got the benefits of Rs.9,25,000/- and new *Maruti S-Presso* car from the firm of the petitioner. Neither there was any inducement nor any pressure upon the investors. The petitioner only conveyed about the policy of the company and the people deposited money as per their choice in order to get profit. The allegation regarding giving an amount of Rs.10 lacs to the petitioner

for providing job to his relatives is totally concocted. He further submits that it is the case of the complainant that original cheque was returned to the petitioner and no-one would return the original cheque when the same being dishonored by the bank**.** He further submits that investigation is complete. Petitioner is not involved in Elite Coin, Crypto Currency and the Elite booster business. The Herbal Raja and Herbal Gold is the brand name of Gaubhakti Ltd. Firm. Challan has been presented. As per challan, complainant gave payment six times in the presence of the witnesses and every time, the same witnesses, who were family members and co-relatives of the complainant, have been shown present. The entire case is based on documentary evidence. As per version of prosecution, Rs.46,000/- has been recovered from the petitioner during investigation. The provision of Sections 3 and 4 of Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 and under Sections 3, 4, 5 & 6 of the Price Chits and Money Circulation Schemes (Banning) Act, 1978 are not attracted as in the present case, complainant himself is agent/beneficiary. Learned Magistrate by invoking said provision committed the case to the Sessions Judge, Hissar on 11.08.2023**,** but till today, no charge has been framed against the petitioner. The next date fixed for consideration of charge is 08.10.2024. Counsel for the petitioner has placed reliance upon judgments passed by Hon'ble Supreme Court in ***Sanjay Chandra Vs. CBI, 2011(4) R.C.R.(Criminal) 898; Ashok Dhingra Vs. N.C.T. of Delhi, Law Finder Doc ID# 88678*** **and the judgments** passed by this Court in ***Rajesh***

Vs. State of Haryana, Law Finder Doc Id #1944777 and ***Amrinder Singh Vs. State of Punjab, Law Finder Doc Id# 2270963.***

4. While opposing the bail to the petitioner, learned State counsel and learned counsel for the complainant have argued that after registration of FIR and during the course of investigation, many persons got their statements recorded that petitioner and co-accused committed fraud with them. The petitioner and co-accused have formed many companies i.e. Jan Swadeshi (P) Ltd., Just Fire Software (P) Ltd., Gau Bhakti Industries Limited, Jay Saral Ayurweda Pharmacy Ltd., Herbal Gold marketing (P) Ltd., Saral Ayurweda, Sawarna Sansaar Jewels Company, S.K. Physiotherapy Center, Fresh Sweets and Elite Coin (Crypto Currency). The petitioner and accused-Sunder Tomar admitted that the co-accused, namely, Jaipal Jangra and he were involved in all illegal process to form the company. On 13.12.2022, Jaipal Jangra was arrested and he admitted that the complainant invested Rs.22 lacs in their companies. Their company's turnover is about 7-8 crores. On 23.08.2023, Rajesh Kumar has also been arrested, but arrest of the other co-accused, namely, Anil Yadav, Surender Sharma, Subhash Chander Sihag is pending. After arrest of the above said co-accused, supplementary report of investigation would be submitted in the trial Court. The petitioner and co-accused fraudulently obtained Rs.80,50,000/- from the complainant and his family members and a sum of Rs. 10 lacs from the complainant on the pretext of providing job to Karan Singh and Manoj in Delhi Metro. They also obtained crores of rupees in the name of Crypto Currency and Elite Coin from

the complainant and other persons. About 107 more victims approached the police against the petitioner and co-accused with similar allegations.

5. Heard.

6. In a landmark decision in **Sanjay Chandra v. Central Bureau of Investigation** reported as **(2012) 1 SCC 40**, the Hon'ble Supreme Court of India crystallized the law in respect of regular bail in the following paragraphs :-

> *"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
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> *22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been*

convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.

47. In the view we have taken, it may not be necessary to refer and discuss other issues canvassed by the learned counsel for the parties and the case laws relied on in support of their respective contentions. We *clarify that we have not expressed any opinion regarding the other legal issues canvassed by the learned counsel for the parties.*

48. In the result, we order that the appellants be released on bail on their executing a bond with two solvent sureties, each in a sum of Rs. 5 lakhs to the satisfaction of the Special Judge, CBI, New Delhi on the following conditions:

(a) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.

(b) They shall remain present before the court on the dates fixed for hearing of the case. If they want to remain absent, then they shall take prior permission of the court and in case of unavoidable circumstances for remaining absent, they shall immediately give intimation to the appropriate court and also to the Superintendent, CBI and request that they may be permitted to be present through the counsel.

(c) They will not dispute their identity as the accused in the case.

(d) They shall surrender their passport, if any (if not already surrendered), and in case, they are not a holder of the same, they shall swear to an affidavit. If they have already surrendered before the learned Special Judge, CBI, that fact should also be supported by an affidavit.

(e) We reserve liberty to CBI to make an appropriate application for modification/ recalling the

order passed by us, if for any reason, the appellants violate any of the conditions imposed by this Court."

In paragraph no.27 of this judgment it is observed as under :-

"45) In `Bihar Fodder Scam', this Court, taking into consideration the seriousness of the charges alleged and the maximum sentence of imprisonment that could be imposed including the fact that the appellants were in jail for a period more than six months as on the date of passing of the order, was of the view that the further detention of the appellants as pre-trial prisoners would not serve any purpose."

7. In case **Giri Raj v. State of Haryana** reported as **2019(1) RCR (Criminal) 530**, a Co-ordinate Bench of this Court granted bail since accused was in custody for 11 months. It was held as under :-

*"14. The principles laid down by the Supreme Court in **Gurcharan Singh and Others Vs. State (Delhi Administration) AIR 1978 Supreme Court 179** were followed by the Supreme Court in **Miss Harsh Sawhney Vs. Union Territory reported in AIR 1978 SCC 1016** and in **Mohan Singh Vs. Union Territory, Chandigarh**. In **Mohan Singh Vs. Union Territory, Chandigarh, reported in AIR 1978 Supreme Court 1095**, even though the counsel for the State argued that the corruption of which the accused was prima facie guilty was substantial, the Supreme Court held that it was not sufficient reason to refuse bail. In paragraph 2 of the said judgment the Supreme Court held thus :-*

"Counsel for the State pressed before us that the corruption of which the appellant was guilty prima facie

according to the results of the investigation) was substantial. Let us assume so. Even then refusal of bail is not an indirect process of punishing an accused person before he is convicted. This is a confusion regarding the rationale of bail. This Court has explained the real basis of bail law in ***Gurcharan Singh Vs. State (Delhi Administration) AIR 1978 SC 179;*** *(1978 Crl. L.J. 129)."*

8. In case **Anil Kumar v. State of Punjab** reported as **2013(3) RCR (Criminal) 854,** a Co-ordinate Bench of this Court granted bail since accused was in custody for 07 months. There were allegations of misappropriation of Rs.4.75 crores.

9. Similarly, in case **Surinder Pal Singh v. State of Punjab** reported as **CRM-M-22982-2020,** a Co-ordinate Bench of this Court granted bail since accused was in custody for more than 6-1/2 months. There were allegations of misappropriation of Rs.1.05 crores.

10. Keeping in view that the petitioner is in custody since 29.09.2022. Challan in this case is already presented. Other complaints have been filed against the petitioner by different persons and the same is matter of investigation. This is not the ground to decline the bail to the petitioner. Further detention of the petitioner would not serve any useful purpose since culpability of the petitioner would be established only during the trial.

11. The present petition is, therefore, accepted and the petitioner is ordered to be released on regular bail subject to furnishing bail bonds in the sum of Rs.2 lacs with two sureties in the like amount out of whom one of the surety shall be resident of District Hissar, Haryana to the satisfaction of trial Court/Duty Judge/ Chief Judicial Magistrate/ Duty Magistrate concerned with the further condition that (i) he shall get his mobile number registered in the trial Court for receiving messages through CIS and shall not change his mobile number during the pendency of the case; (ii) he shall notify his residential address in the trial Court as well as in the concerned police station of District Hissar, Haryana and shall not change his residence without informing the trial Court as well as concerned police station; (iii) he shall deposit his passport in the trial Court within 7 days and if he is not having any passport, the affidavit to that effect be furnished in the trial Court. The trial Court may impose any other condition as it deems fit.

12. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of material available before it.

(GURBIR SINGH)
JUDGE

August 28, 2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No