



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(228)

CRM-M-9554-2024 (O & M)
Date of decision: 18.07.2024

Sanjay Verma Petitioner
V/s
State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vinod Ghai, Sr. Advocate,
with Mr. Nikhil Ghai, Sr. Advocate,
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.822 dated 10.11.2017 under Sections 406, 420 and 120-B IPC registered at Police Station Hisar Civil Lines, District Hisar.

2. The present FIR came to be registered at the instance of Kamla Devi and reads as under:-

“To, the Chief Minister, CM Window Hisar. Subject- Regarding Fraud committed in terms of money. Sir, it is requested that I Kamla Devi W/o Late Sh. Shatrughan Prasad caste Yadav am resident of H. No. 108/C New Model Town Extention Hisar Tehsil & District Hisar. It is stated that on the asking of Narender Kumar 5/o Udaypal Singh R/o H. No. 12 Azad Nagar Hisar Mobile no. 9034010524, 7988109960 & Pushpender Kumar R/o H. No. 859 Sector 46 Faridabad; my husband Late Sh.



Shatrughan had started work of saving scheme. Narender Kumar used to come to our house and used to take money, he used to do money transactions. He used to say that our deposited amount was his responsibility because company's property was in his name. he used to take money from my husband and used to give receipt under his signatures in the name of Malvanchal company & Pragatinidhi company. In year 2017 my husband got sick and we asked the money from Narender Pal S/o Udaipal, then he just misguided us. Because of this, due to lack of money, my husband died after long ailment in the month of March. In this manner these people have made us to deposit but when we needed the same we were not given out money back, due to which my husband had died. Now even after 5 months, only 9-10 thousand rupees have been returned. Even now about Rs.6 lakhs is due towards him. My two daughters are of marriageable age & my son is studying. Therefore you are requested that above complaint may be taken into consideration & my money may be returned so that I can help my children in their study & marriage. Thanking you. Name of accused: Narender S/o Udaipal & Pushpinder Kumar. Applicant RTI Kamla Devi W/o Late Sh. Shatrughan H.No. 108/C New Model Town Extention Hisar. Mobile no. 8950864206 Dated: 18.09.2017”.

3. During the course of investigation, the petitioner came to be arrested.

4. The learned Senior counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. Be that as it may, as he had undergone more than 04 years of his actual sentence and the

maximum sentence which could be awarded to the petitioner was 07 years,



he was entitled to the concession of bail in terms of the provisions of Section 436-A Cr.P.C. as he has already undergone more than half of the actual sentence that could be imposed upon him.

5. The learned counsel for the State, on the other hand, while referring to the affidavits dated 23.04.2024 and 06.07.2024 contends that the petitioner was a habitual offender with multiple cases registered against him. The nature of the allegations levelled against the petitioner did not entitle him to the concession of bail. He, however, concedes that the petitioner was in custody since 15.02.2020, that none of the 38 prosecution witnesses had been examined so far and that in some of the cases registered against him, he was granted the concession of bail.

6. I have heard the learned counsel for the parties.

7. In the case of '**Satender Kumar Antil Versus Central Bureau of Investigation & Anr. 2022 LiveLaw (SC) 577 decided on 11.07.2022**', in the context of Section 436-A Cr.P.C., the Hon'ble Supreme Court held as under:-

"Section 436A of the Code

436 A. Maximum period for which an undertrial prisoner can be detained.— Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than



one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

46. Section 436A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word ‘trial’ will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.

47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word ‘shall’ clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, 37 has to do so. However, such



an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that 'bail is the rule and jail is an exception' coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This court in Bhim Singh v. Union of India, (2015) 13 SCC 605, while dealing with the aforesaid provision, has directed that:

"5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance."



48. *The aforesaid directions issued by this Court if not complied fully, are expected to be complied with in order to prevent the unnecessary incarceration of undertrials, and to uphold the inviolable principle of presumption of innocence until proven guilty.”*

8. In the instant case, the petitioner has been in custody since 15.02.2020 and has undergone almost four and a half years of imprisonment which would be more than half of the maximum term to which he could be sentenced i.e. 07 years.

9. Further, the details of the various other cases registered against the petitioner in which he is either on bail, in custody or has been acquitted, are reproduced as under:-

Pending Cases: Similar allegations		
Sr. No.	Detail of other cases	Status
1.	FIR No.81/2019 U/s 409, 467, 471, 120-B, P.S. Majhali, Sidhi Similar allegations: Director of USK did not return invested money of complainant	On bail:14.03.2024
2.	FIR No.69/2019 U/s 420, 406, 409, 120-B IPC and Sections 3, 4, 5 and 6 of Chit Fund Act,	On bail (sos) 18.04.2024
3.	FIR No. 67/2024 U/s 420, 34, 120-B IPC, P.S. Samshbad, Vidisha, MP	On bail 23.04.2024
4.	FIR No.205/2020, U/s 420, 406 IPC, P.S. Salana, District Ratlam	On bail 13.02.2024
5.	FIR No.275/2016, U/s 420, 409 and 120-B IPC	On bail 28.04.2017
6.	FIR No.462/2018 U/s 420, 406, 120-B IPC, Model Town, Rewari	On bail 31.08.2023
7.	FIR No.754/2017 U/s 420 IPC, MP	On bail 07.07.2017
8.	FIR No.540/2018, U/s 420, 406, 467, 468, 471, 120-B IPC, U/s 3, 4, 5 and 6 of Chit Fund, P.S. Hindaun, Jarauli, Rajasthan	Convicted SOS:01.05.2024
9.	FIR 297/2017, MP	On bail 01.07.2017
10.	FIR 179/2018, U/s 420, 406, 120-B IPC, P.S. NEB, Alwar	Acquitted 02.01.2024
11.	FIR 516/2021, U/s 420 IPC, P.S. Thikri, Barwani	Acquitted 17.10.2023



12.	FIR 38/2021, U/s 420, 34 IPC, P.S. Noorganj, Raisen	Acquitted 07.12.2023
13.	FIR 21/2019, U/s 406, 420, 468, 467, 120-B, 506 IPC, P.S. City Panipat	On AB 24.09.2021
14.	FIR 189/2018, U/s 406, 420, 120-B IPC, P.S. Naib, Alwar	Acquitted 23.07.2023
15.	FIR 291/2018, U/s 420, 467, 468, 471 IPC, PS Palasia, Indore	On bail 28.10.2022
16.	FIR 115/2020, U/s 420, 409, 120-B IPC, P.S. Kotwali, Jhalawad, Rajasthan	On bail 10.08.2023
17.	FIR 317/2017, MP	On bail 22.10.2018
18.	FIR 408/2018, U/s 406, 420, 120-B IPC, PS Kotwali, Faridabad	On bail 02.11.2023
19.	FIR 72/2017, U/s 420, 120-B IPC, P.S. Palasia, Indore	N/A
20.	FIR 144/2018, U/s 420 IPC, P.S. Muzaffarnagar	On bail
21.	FIR 1207/2020, U/s 420 IPC, PS Majhar, Satna, MP	On bail
22.	FIR 787/2020, U/s 420, 406, 120-B, 34 IPC, P.S. Itarsi, Hoshangabad, MP	N/A
23.	FIR 245/2017, U/s 409, 420 IPC, P.S. Bagh, Dhar, MP	On bail 27.02.2021
24.	FIR No.136/2019, U/s 420, 406, 120-B IPC, P.S. Sadar, Nuh, Mehwat	On bail 21.09.2023
25.	FIR No.502/2018, U/s 420, 406, 120-B IPC, P.S. City Jind	On bail
26.	FIR 518/2018, U/s 420, 406 IPC, P.S. City Panipat, Panipat	In custody
27.	FIR 21/2019, U/s 406, 420 IPC, P.S. City Panipat	In custody
28.	FIR 158/2021, U/s 420 IPC, P.S. Shamshabad, Vidisha, MP	In custody
29.	FIR 55/2021, U/s 420, 409 IPC, P.S. Ashta, Sehore,	N/A

10. The petitioner has been granted bail in multiple cases. He has undergone more than half of his maximum possible sentence of imprisonment but none of the 38 prosecution witnesses have been examined so far. However, the Trial of the present case is not likely to be concluded anytime soon. In this situation, his further incarceration is not required.

11. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sanjay Verma is



ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

12. The petitioner shall appear on the first Monday of every 2nd month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any other cases other than those mentioned in Para 9 of this order.

13. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

July 18, 2024
sukhpreet

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No