

Sat Parkash

State of U.T. Chandigarh ...Respondent

Present: Mr. Anandeshwar Gautam, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present FIR was lodged on the allegations made by the complainant-Rekha Rani that one, Kiran Gupta with her brother-in-law, Jay Prakash, arrived at her house since she has been visited her house earlier also and told her that she will facilitate an opening of a bank account in the name of the children of the complainant. On the next day, she accompanied the complainant to SBI Bank situated at Manimajra. Kiran Gupta had come along with her husband, Sat Prakash (the petitioner herein) and asked the complainant to sign in English. The complainant told her that she is uneducated and cannot sign in English and Kiran Gupta took her Aadhar Card, ATM card along with

SIM card and her signatures in English on some plain papers. It is further alleged that a bank official came to the house of the complainant and told her that her bank loan instalment is due and then the complainant realized that Kiran Gupta and her husband has got sanctioned a loan of Rs.5 lakh in her name and Kiran Gupta had taken 06 cheques of Co-operative Bank, 02 cheques of SBI Bank and 05 cheques of Capital Small Bank which she has got bounced.

Learned counsel for the petitioner *inter alia* contends that there is no evidence to indicate the complicity of the petitioner as per the case set up by the prosecution that the petitioner has induced the complainant and obtained her signatures on the pretext of opening her account in State Bank of India and, thereafter, her signature was obtained on various cheques and on other documents. He further refers to the final report under Section 173 Cr.P.C. and submits that the gist of the allegations against the petitioner is false as the complainant already had her account in State Bank of India. It is further submitted that the Investigating Agency has already concluded the investigation and petitioner is not involved in any other case.

Per contra, the learned State counsel, on instructions from SI Malkit Singh, opposes the prayer made by learned counsel for the petitioner for grant of regular bail to the petitioner on the ground that the petitioner and his wife have duped a poor lady and out of the said loan amount of Rs.5 lakhs, Rs.2 lakhs have been withdrawn by the petitioner through cheques, Rs.1,32,000/- has been withdrawn through ATM and Rs.1,40,000/- has been transferred in the name of Dharambir Singh, without the knowledge and consent of the complainant and the wife of the petitioner along with her husband (petitioner) has forged the salary slip of the complainant and shown her as Superintendent

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of Vidhan Sabha for obtaining loan, as such, their complicity is duly established in the alleged fraud.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 16.10.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 11.12.2023 and trial of the case has not made much progress as out of 12 prosecution witnesses, none has been examined so far. Supplementary challan is yet to be presented as the FSL report is awaited. The culpability, if any, would be determined at the time of

trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Sat Parkash is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

(HARPREET SINGH BRAR)
JUDGE

14.03.2024
Neha

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