IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207 **CRM M- 15376 of 2022**
Date of Decision: 31.01.2024

Manjider Singh Cheema ...Petitioner

Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. G.K. Mann, Senior Advocate with
Ms. Komal Balain and Mr. Sunil Kamboj, Advocates
for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant him a regular bail in case FIR No.0062 dated 21.04.2021 registered under Sections 420/120-B of IPC at Police Station Dasuya, District Hoshiarpur.

2. The FIR in the present case was registered on the basis of the complaint filed by Gurinder Singh, Manjit Kaur, Rakesh Kumar and others and the same has been reproduced below:-

> *"We the complainants submit that the accused persons namely, Ravinder Singh Sidhu son of Avtar Singh, resident of 125 Park, Near Ryan School, Daburji Chowk, Police Commssionerate, Amritsar, Kamaljit Singh @ Ball c/o Kim Company, Opp. Girl Hostel, near Phagwara Road, City Hoshiarpur, Manjinder Singh @ Cheema C/o Kim Company, Opp. Girl Hostel, near*

Phagwara road, City Hoshiarpur, Kanchan Kumar @ Ditta, Director, Kim Company, Head Office Bhai Gurdas Ji Nagar, Amritsar, Police Commssionerate, Amritsar, Mangat Ram resident of Dhulowal, Post Office Khirawall, Kapurthala, Ram Pal son of Kartar Chand, resident of V.P.O. Dhariwal, Tehsil and Distt. Gurdaspur, Surinder Kumar son of Sai Dass, resident of village Dharanpur, Tehsil Mukerian District Hoshiarpur, Kuldeep Singh Trikha son of Mohinder Lal, resident of village Fathan Chak, Tehsil Dasua, District Hoshiarpur, Parveen Kumar son of Swaran Dass, resident of Village Dharampur, Tehsil Mukerian, Distt. Hoshiarpur, Satish Singh son of Gurbachan Singh, resident of village Sanghwal, District Hoshiarpur and Rattan Pal son of Dass Ram, resident of V.P.O. Dera Baba Nanak, Tehsil and District Gurdaspur are directors, promoters and authorized agents of M/s Kim Infrastructure & Developers Ltd., having its registered and corporate office at 1307, Rajendra Place, New Delhi-110008. The accused company M/s KIM Infrastructure and Developers Limited ("Company" for short) was incorporated on 14.9.2005 carrying on the real estate business i.e. purchase/sale of land and construction activities on the said land. In the year 2006 the accused floated two schemes namely; Lump Sum Plan or, Onetime Payment Plan and Regular Investment Plan or Deferred Payment Plan. Under the Lump Sum Plan, the investors were required to pay upfront entire cost of the plot which the investors seek to purchase. In case of Regular Investment Plan, the investors were entitled to pay the cost of the plot in the installments. Under both the schemes floated by the accused the land was allotted *by the company after a period of three years and allotment of land was at the sole discretion of the company. Moreover, in both the schemes they could opt to quit from the scheme investors after the specified period and seek refund of the amount invested with promised returns. In Public Interest Litigation, the Madhya Pradesh High Court, based on a CBI report passed an order on 13.7.2012 directing various authorities including SEBI to take appropriate action against the companies mentioned therein in accordance with law. In that list, name of the company (KIM Infrastructure) was also included. While the investigation was being conducted by the SEBI, the accused collected huge money from the investors, running in more than Rs. 15 crores, all over the country in the name of land bank and sale of land by alluring the investors that under the schemes floated, being floated by them, the price of the plot included the development charges and there was no separate charge for development charges and the allotment of land was to take place generally after 3 years of investment as per the terms and conditions. The complainants invested of Rs.18 crore, as per the attached details with the accused persons, however, the accused neither issued the allotment letters nor refunded the amount so invested by the complainants. Besides, the investigations being conducted by the Ministry of Corporate Affairs, Govt. of India, New Delhi as well as the SEBI, for committing fraud with gullible investors, all over the country. The accused persons, namely, Ravinder Singh Sidhu, Kamaljit Singh @ Ball, Manjinder Singh @ Cheema, Kanchan Kumar @ Ditta, and Mangat Ram are also* *facing investigation in F.I.R. No.93 dated 11.6.2019, U/s 406, 420 IPC at P.S. City Hoshiarpur and in FIR No. 198 dated 23.10.2018 U/s 406, 420, 120-B IPC, registered at Police Station: Phase-1 Mohali. The accused persons, namely, Ram Pal, Surinder Kumar, Kuldeep Singh Trikha, Parveen Kumar, Satish Singh and Rattan Pal collected the money from the complainants on behalf of the remaining accused persons, namely, Ravinder Singh Sidhu, Kamaljit Singh @ Ball, Manjinder Singh @ Cheema, Kanchan Kumar @ Ditta, and Mangat Ram. You are, therefore, requested to order registration of an FIR against all the accused for indulging in large scale multi crores chit fund scheme and committing fraud and cheating the complainants and justice be done with the complainants by getting from the accused, aforesaid.".*

3. Learned senior counsel appearing on behalf of the petitioner submits that the allegations have been levelled in the present FIR against the directors/promoters/agents of M/s Kim Infrastructure and Developers Limited and M/s KIM Future Vision Services Limited. However, the petitioner is neither the Director of the said companies nor has any other connection with the said companies. Learned senior counsel further relies upon a list of directors of the said company (Annexure P-1), which clearly proves that the petitioner is also an investor in the said companies. Further, even the present petitioner has been cheated by the company as his family had made investments in the company but neither they received any land nor their money was returned. Learned senior

counsel further contends that the petitioner was arrested in the present case on 06.09.2021 and is in custody since then. All the offences in the present case are triable by the Court of Magistrate. Still further, the final report under Section 173 Cr.P.C. has already been presented before the Court and the conclusion of the trial may take quite a long time.

4. A status report by way of an affidavit of the Superintendent Central Jail, Hoshiarpur has been filed on behalf of the respondent-State and the same is taken on record.

5. Learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner on the ground that the petitioner and his co-accused had cheated the complainants and induced them to invest a sum of Rs. 18 crores in their various schemes. However, neither the land was given to the complainants nor their money was returned. Further, the petitioner is an influential person and even may abscond from the process of law.

6. I have heard learned counsel for the parties and perused the record.

7. It has been held by the Hon'ble Supreme Court of India in the matter of **Sanjay Chandra Vs. CBI, 2011(4) R.C.R. (Criminal) 898** and **2011 AIR (SCW) 6838** as follows:-

> *"14. In bail applications, generally, it has been laid down from the earliest times that the object of bai 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 can be 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. 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 un-convicted 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. Apart from the question of prevention being the object of a 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 un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged *are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Criminal Procedure Code confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual. This Court, in* ***Kalyan Chandra Sarkar v. Rajesh Ranjan, 2005(1) RCR (Criminal) 703 : 2005(1) Apex Criminal 307 : (2005)2 SCC 42,*** *observed that "under the criminal laws of this country, a person accused of offences which are non-*

> *bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."*

8. In the present case, the petitioner was arrested on 06.09.2021 and is in custody since then. Still further, this Court is conscious of the fact that serious allegations have been levelled against the petitioner, however, the Investigating Agency has already completed the investigation and the final report under Section 173 Cr.P.C. has been presented against the petitioner. Therefore, the presence of the petitioner in custody may not be required for the purpose of any investigation. Still further, the prosecution has not been able to place on record any material to show that the petitioner may flee from the process of justice. Even, the offences are triable by the Court of Magistrate. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail.

9. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered

to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

> *(i) The petitioner 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.*
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> *(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.*
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> *(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.*
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> *(iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.*
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> *(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.*
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> *(vi) In case, the petitioner gets involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move an appropriate application for cancellation of bail granted to the present petitioner.*
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> *(vii) The concerned Court may insist two heavy local surties and may also impose any other condition, in*

accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

(viii) The petitioner shall report every 1st Monday in English calander month before the concerned SHO till the conclusion of the trial and SHO shall mark his presence by making an entry in the Rojnamcha. In case, he does not report on every 1st Monday before the concerned SHO, it shall be viewed seriously and the concession granted to him shall be liable to be cancelled and the State of Punjab shall be at liberty to move an appropriate application in this regard.

31.01.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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