



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22034-2024
DECIDED ON: 17.12.2024

LALIT SHARMA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Thind, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.0153, dated 17.08.2022, under Sections 420, 120-B, 465, 467, 468, 471 IPC, registered at Police Station Sadar Jagroan, District Ludhiana Rural.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Application No. 2024-PC-1 Dated 09.06.2022 Senior Superintendent of Police Ludhiana (Rural) UID 2366165 Kulwinder Singh Son of Garib Singh Resident of Village Qutba District Barnala is submitted as under, SSP Sahib Jagraon against Lalit Sharma son of Baljit Sharma resident of village Pada district Karnal (Haryana) and Prabhjit Kaur daughter of Nirmal Singh resident of village Chimna tehs il Jagraon district Ludhiana

conspire with each other to commit 420 and to commit fraud of Rupees: - 22 lakhs. Sir, I am kulwinder singh Son of Garib Singh resident of village Qutba tehsil and district Barnala. That my niece whose name is S Co-accused daughter of Nirmal Singh resident of village Chimna tehsil Jagraon, district Ludhiana. That on March, 2021 my niece Co-accused told me that I get your son recruited in the Punjab Police. That she said that I have a friend in my acquaintance, whose name is Lalit Sharma son of Baljit Sharma, resident of village Pada, district Karnal, (Haryana), who recruits in Punjab police and I recruit Mandeep Singh. That the whole family of Co-accused assured me that we all know Lalit Sharma for a long time and after some time Lalit Sharma and Co-accused demanded Rs 10 lakh (ten lakh rupees) money from us. That on May 2021 we went to the house of Co-accused in the village Chimna and in the presence of her entire family, we gave an amount of Rs. 3 lakh to her and after some time, on May 2021 Prabhajit Kaur's brother Ravipal Singh who came to our house along with Lalit Sharma and took another 2 lakh rupees from us. That after some time Lalit Sharma started demanding more money from us and he again on July 2021, we transferred 5 lakh rupees (the five lakh rupees) through Google Pay to his mobile number: 62849-34916. That after some time, Lalit Sharma told us that if anyone wants to join the Punjab Police, Tell me, I will recruit him too. That I told him about my brother-in-law's son Baldev Singh son of Jagtar singh resident of village Fatehgarh Panj Garaiyan and my son Mandeep Singh's friend Nahar Singh son of Jeet Singh resident of village Bhara district Sangrur. That Nahar Singh wanted to recruit his wife Ramanpreet Kaur. That after some time Lalit Sharma took 8 lakh rupees from Baldev Singh (the eight lakh rupees) and 10 lakh

rupees from Nahar Singh. That he took a total of 28 lakh rupees from us. That Lalit Sharma has been coming to our house many times wearing army uniform and kept telling us that I am working in the CRPF police force and he kept showing us his photos with weapons in his uniform and kept making video calls to us saying that I am on duty and that he used to wear his weapons through video calls, which I had photo with me. Due to which we also trusted him. That when time passed and he did not give us any way and he did not tell us anything about recruitment properly, then we demand our money from him. That after our repeated request, Lalit Sharma returned 4 lakh rupees to Baldev singh and 2 lakh rupees to me. That now we have a total of 22 lakh rupees (the two lakh rupees) due and but he did not return any money to Nahar Singh. That now Lalit Sharma has been fooling us for a long time and he has given us blank cheques many times and he has made us a pronote twice. That after some time Lalit Sharma's father Baljit Sharma and his mother Sunita Devi also came to us in village Chimna and assured us that we will return 15 lakh rupees to you within 20 days, but now they have also refused to pay the money. That now it is not giving us any way. That we also told Lalit Sharma that we have to give the application against him, but still Lalit Sharma did not listen. That my niece Co-accused and Lalit Sharma together have committed a big fraud on us and has done 420 with us. It is my request to you that proper action be taken against Lalit Sharma and his father Baljit Sharma and Co-accused and his brother Ravipal and the culprits should be punished severely and we Please refund all the amount due to us and give us the justice we deserve. You will be very kind.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and the allegation against the petitioner are that he duped the complainant on the pretext of arranging the job for his son and on that account, has received a considerable amount. He further submits that Rs.6 lacs already stands paid back to the complainant. It has been contended on behalf of the petitioner that he is in custody since 06.02.2024 and challan stands presented to Court on 18.03.2024.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the petitioner is the beneficiary of the transaction alleged to have taken place between the present petitioner and the other co-accused.

4. **Analysis**

Be that as it may, considering the custody period i.e. 10 months and 10 days for which the petitioner has suffered incarceration; the petitioner has already paid back Rs.6 lacs to the complainant, which is not disputed. Moreover, the conduct of the complainant also cannot be commented upon as he is equally responsible for arranging a job for his son through unfair means and the fact that the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate; co-accused namely Prabhjit Kaur already stands admitted on regular bail by the Session Court vide order dated 16.03.2024 (Annexure P-3) in addition to the fact that investigation is complete, challan stands presented to Court on 18.03.2024,

charges have been framed on 19.03.2024 and out of total 13 prosecution witnesses none has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take long time for which the petitioner cannot be detained behind the bars for an indefinite period.

Reliance can be placed upon the judgment of the Apex Court rendered in “***Dataram versus State of Uttar Pradesh and another***”, 2018(2) ***R.C.R. (Criminal) 131***, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether

denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused

person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416; 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658

6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nimesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”

Therefore, to elucidate further, this Court is conscious of the

basic and fundamental principle of law that right to speedy trial is a part of

reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

5. DECISION:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, the present petition is hereby allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

17.12.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No