

2024.PHHC.161964



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24644-2024 (O&M)
DECIDED ON: 04.12.2024

PARVEEN KUMAR @ PARVEEN YADAV

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ramnish Puri, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana.

SANDEEP MOUDGIL, J (ORAL).

CRM-21545-2024

Application is allowed, as prayed for.

Exemption from filing typed/certified copies of Annexures is granted.

CRM-M-24644-2024

1. Relief Sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in case FIR No.09 dated 08.01.2022, under Sections 420, 465, 467, 468, 471, 506, 120-B of IPC, 1860 registered at Police Station Manesar, Gurugram.

2. Facts

Facts as narrated in the FIR reads as under:-

“FIR was registered on the complaint of complainant Monesh Israni against Parveen Yadav and Dinesh Mohan Sorkhi, Kamal Singh and other unknown accomplices and Bank officials of Axis Bank wherein it was alleged that the

accused persons have played fraud and cheated the Bank for an amount of Rs.64.49 crores on the pretext of providing tenders for construction of housing projects of National Security Guards, Manesar by forging the documents of the office of Director General, NSG, Manesar and by opening and operating a fake Bank Account No.9110200000936255 in Axis Bank, NSG, Manesar in the name of G.C. (Garison) NSG, Manesar. It is further alleged that the complainant is the Director and authorized person of M/s Narain Dass R Israni Co. (P) Ltd and in the month of September, 2021, the Directors of the complainant company were approached by co-accused Parveen Yadav pretending himself to be an IPS Officer and Station Commandant NSG by giving his mobile number and Aadhar Card number through co-accused Dinesh Mohan Sorkhi, who pretended to be an old friend of Parveen Yadav. Both the accused projected and allured the complainant that there are two big housing projects in NSG, Manesar and if the complainant gives his bid, they will get them allotted the work. The complainant was regularly called to NSG, Manesar campus by the aforesaid two persons and they met the accused in Officers' Mess of NSG, Manesar. On such allurements, the accused persons gave a letter dated 08.09.2021 to complainant for calling quotation for 740 type III residential quarters and another letter dated 16.10.2021 for calling quotation for construction of residential quarters, which was received by Speed Post. The complainant, believing the representation of the accused persons to be genuine regarding aforesaid two tenders, deposited an earnest money of Rs.17,71,56,000/- by way of Cheque No.001811 dated 21.09.2021, drawn on Bank of Baroda in the name of "Office of CG(Garrison) Station Head Quarters NSG" and made another payment of Rs. 46,78,25,220/- by way of Cheque No.001829 dated 03.11.2021, drawn on Bank of Baroda in the name of "Office of CG(Garrison) Station Head Quarters NSG". Both the cheques were cleared into the account No.92102000036255 at Axis Bank, NSG, Manesar Branch. The accused provided a letter dated 22.10.2021 intimating the lowest bid (L-I) through post and acknowledged the documents. That letter of acceptance of tender will be received in the first week of January, 2022 alongwith agreement and letter of intent. In the meantime, the accused persons used to visit the complainant and they would pretend to talking them to various other persons in the office of NSG, Manesar and other vendors, who would supply various commodities to NSG, Manesar. That for 2/3 days, accused Parveen Yadav and other co-accused stopped attending the phone calls of the complainant and when he visited the house of Parveen Yadav, he came to know that he alongwith his family has left the house and lateron, it came to his notice that the entire act was a fraudulent act of cheating the complainant by preparing and using forged documents, which were even used for opening a new Bank Account in Axis Bank in the name of "Office of CG(Garrison) Station Head Quarters NSG" and "EMD

for Central Warehouse NSG" and in that manner, the complainant has been cheated and defrauded of an amount of Rs.64.49 crores. He requested to take action against the accused."

3. Contentions:

On behalf of the petitioner

At the outset, learned counsel for the petitioner submits that the petitioner is in custody since 23.01.2022 and trial is proceedings at snail's pace, wherein out of total 106 prosecution witnesses, none has been examined after framing of charges on 20.03.2023.

On behalf of the State

Status report filed by way of an affidavit of Vipin Kumar Ahlawat, HPS, Assistant Commissioner of Police, Manesar, Gurugram is taken on record.

Perusal of the status report shows that no prosecution witness could be produced on account of the multiple applications being made by the petitioner and for that purpose and considering of those applications, time and again matter was deferred before the trial Court. He prays for dismissal of the present petition on the ground that the petitioner is a habitual offender, as he is involved in many other cases.

4. Analysis

The petitioner has already suffered incarceration of 2 years, 10 months and 12 days, as is evident from the perusal of the custody certificate filed by learned State counsel, which is taken on record. It is also on record that all the co-accused persons have already been granted the concession of bail by this Court, though the role of these co-accused is contended to be different than that of the present petitioner.

This Court cannot shut its eyes to the fact that trial will take long time, as out of total 106 prosecution witnesses, none has been examined so far

after framing of charges on 20.03.2023, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 Nikesh 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “*Baljinder Singh alias Rock vs. State of Punjab*” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

5. DECISION:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on 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.

(SANDEEP MOUDGIL)
JUDGE

04.12.2024

Meenu

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