IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.27676 of 2024
Reserved on: 06.08.2024
Pronounced on: 30.08.2024

Sunil Kumar Diwan **...Petitioner**

Versus

State of Haryana **…Respondent**

CORAM: **HON'BLE MR. JUSTICE ANOOP CHITKARA**

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

Mr. Rajat Gautam, Addl. A.G. Haryana.

Mr. Davinder Lubana, Advocate
for the complainant.

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ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
255	13.07.2021	Naraingarh, District Ambala	120-B, 406, 420 IPC, 1860 (sections 467, 468, 471, 201 IPC and Section 3 of HPIDFE Act added later on)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 CrPC, 1973, seeking regular bail.

2. Per paragraph 9 of the bail application and para 21 of the reply, and the custody certificate, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1.	43	11.02.2020	Under sections 406, 420, 120-B IPC (Sections 467, 468, 471, IPC added later on)	Naraingarh, District Ambala
2.	8	04.01.2021	Under sections 406, 409, 420, 467, 468, 471, 120-B IPC 1860	Naraingarh, District Ambala
3.	558 of 2023	--	Under sections 406, 34 IPC	Tilak Nagar, Ambala

3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

> "*3. That as a matter of fact the present case/FIR was registered on the complaint made by Ram Karan Walia son of Sh. Balwant Singh R/o H. No. 408, Sector-4, HUDA, Naraingarh District Ambala who has alleged in the complaint against the accused-petitioner Sunil Kumar Diwan and other co-accused persons who were the office bearer and President of The Nationalized Bank Employees & others Public Co-operative T & C Society Ltd. Naraingarh i.e. total 22 accused and in the year 2018 namely Kuldeep Kumar (President) Sunil Kumar Deewan (Vice President), Rasal Chand, Mukesh Kumar (Accountant) Vinod Sharma (Executive Member), Pawan (since deceased), Som Nath, Amit Kumar, Vipin Kumar, Ankit Kumar, Sumit Kumar Diwan, Sahil Deewan, Suman Deewan, Sharda Rani, Kamlesh Rani, Anil Diwan, Ritu Rani, and Master Hamir Singh, Sunehri Devi, Om Parkash, Naib Ali and Parmar Singh. The allegations of the complainant in above mentioned FIR No. 255 dated 13.07.2021 are that the accused Sunil Kumar Diwan, Vinod Kumar and co-accused Rasal Chand were employees of the State Bank of India and they alongwith other employees of bank constituted a co-operative society in the name of "The Nationalized Bank Employees and other Public Co-Operative T & C Society Limited, Naraingarh' and accused- petitioner Sunil Kumar Diwan joined as Vice President of society. Mukesh Kumar joined as Account Manager and in connivance with other co-accused Kuldeep Kumar, Vinod Kumar and co-accused Rasal Chand became the office bearers of the society. All the accused allured the general public to invest in the society to get higher rate of interest 13% as compared to the other nationalized Bank and issued FDs against investment to various people. On the allurement of accused persons, complainant Ram Karan Walia who was an employee Food Corporation of India and retired on 30.09.2010, invested Rs 24,72, 265/- by way of different FDs from the year of 2010. Similarly other complainant Smt. Swaran Kaur w/o Surjeet Singh, Vijay Bala w/o Lt. Rajeev Modgil and Piyush Modgil son of Lt. Rajeev Modgil also invested huge amount on the allurement of accused-petitioner and other co-accused by way of different FDs in the Society and thereby all the accused have cheated the public at large for huge amount i.e. 1,75,43,214. On the each date of maturity of FDs, complainants kept on renewing these FDs till the year 2020. In the year 2020 when the complainant asked to mature their FDs, the accused person refused to return their amount. Accused person thereby committed fraud of Rs. 1,75,43,214/- as principal amount. The facts in detail have been mentioned in the FIR and the copy of FIR has already been annexed by accused-petitioner with the petition as Annexure P-1, hence, the facts in detail are not repeated herein for the sake of brevity."*

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. The complainant has also opposed the bail and has referred to para 3 of their reply, which reads as follows:

> *"3. That it is further useful to submit here that there are more than 600 investors in the present case, who in majority are Ex- servicemen, daily wagers, farmers and retiree etc. and they were cheated for more than Rs.100 crores. The investors/complainant have invested their hard earned lifelong earnings with the*

accused-Society, for the better future of their children and a peaceful and contented life at their fag end of their respective life. But, the petitioner alongwith others had defrauded the investors/complainant, in other words, the petitioner alongwith others had brought the investors/complaint on the roads by usurping their their lifelong savings/investments invested wit the society. On this ground alone, the present bail application is liable to be dismissed."

7. It would be appropriate to refer to the following portions of the reply, which read as follows:

"17. That it is submitted that during investigation, it has come on record that the co-accused Suman Diwan is the wife of accused-petitioner Sunil Kumar Diwan and Sharda Rani is the wife of co-accused Vinod Kumar and Kamlesh Rani is wife of co-accused Rasal Chand. The accused- petitioner Sunil Kumar Diwan, co-accused Rasal Chand, and Vinod Kumar purchased and sold different properties in the name of their wives and other family members. The detail of properties purchased in the name of co-accused Suman Diwan and Sharda Rani and others jointly are as under:-

A) 4 Shops at Naraingarh

B) Plot of 600 Yards at Pinjore district Panchkula

C) Plot of 300 yards at Kansa Pur district Yamuna Nagar.

D) One Plot at Bilaspur, District Yamuna Nagar.

E) Plot of 200 yards at Shyam Nagar, Sarojini Colony Phase 1. Yamuna Nagar in the name of co-accused Sharda Rani, Suman Diwan, Rajni Lamba and Meenu Lamba.

F) In the year 2003, 18 acre land at village Araiyanwala in Tehsil Khizarabad District Yamuna Nagar in the name of accused-petitioner Sunil Kumar, Diwan Rasal Chand, Kuldeep Kumar, Anil Diwan, Suman Diwan, Kamlesh Rani, Sahil Diwan which sold in the year 2019-20.

G) Two room set in housing society Kala Amb District Ambala

H) One Show Room in Bilaspur district Yamuna Nagar.

I) 4 Acre Land in village Tamnoli Tehsil Barara, District Ambala.

J) One Kanal Plot in Bilaspur district Yamuna Nagar.

K) 3 Flats in Surya Housing society, Faridabad.

18. That during investigation of the case, it has also come on the record that all the accused have purchased 25 properties from the cheated amount of the general public at various places and thereafter, they in connivance with each other sold the 15 properties and divided the among themselves. However, the accused-petitioner and co-accused could not sell the ten properties. The detail of the properties which could not be sold is as under:-

a) 40 Marla land has been purchased in the name of co-accused Vinod Kumar at Kala Amb, however, in the year 2019, some of the portion of land has been sold in plots but 6 Marla of land is still remained in the name of co-accused Vinod Kumar.

b) Flat No. 703, Monograin Society, Zirakpur was purchased in the name of accused-petitioner Sunil Kumar Diwan having loan of Rs. 35 Lacs.

c) 4 Acre of land in village Tamnoli Tehsil Barara was purchased in the name of accused-petitioner Sunil Kumar Diwan having worth of Rs. One Crore Fifty lacs.

d) Co-accused Sumit Diwan son of Sunil Kumar Diwan became the co-owner with the investment of cheated amount having 30% share in the factory Bioconic Remidies, Ponta Sahib with two other share holders.

e) There is a medicine factory in the name of Shivam Enterprises at Kala Amb and Co-accused Sumit Diwan son of Sunil Kumar Diwan and Vipin Kumar son of co-accused Rasal Chand became the co-owner with the investment of cheated amount having 33% share each in the factory with one another co- owner Anil Garg.

f) Two plots of 8 Marla and 5 Marla have been purchased in the year 2016 and 2018 respectively in village Ambali with the cheated amount in the name of co-accused Ritu Rani wife of co- accused Randhir and still lying in her name.

g) Co-Accused Mukesh Kumar constructed a new house in village Ambli with the cheated amount.

h) House No. 849, Sector-17, HUDA Jagadhar, Yamuna Nagar is in the name of co-accused Rasal Chand purchased with cheated amount and is still in his name.

i) House No. 759, Sector-17, HUDA Jagadhar, Yamuna Nagar is in the name of accused-petitioner Sunil Kumar Diwan purchased with cheated amount and is still in his name.

j) House No. 92, Professor Colony, Yamuna Nagar is in the name of co-accused Vinod Kumar purchased with cheated amount and is still in his name."

8. The allegations are of duping people by promising them exorbitant returns on investments and then fleeing away with their money. The allegations are heinous, but the offense occurred due to a lack of government safeguards in the non-banking sector and a lack of apt regulations. Evil people are always on the hunt to grab these shortfalls. The illegal non-banking financial companies mushroomed under the eyes of law enforcement agencies and the concerned government agencies and authorities, who did not take any timely actions against such scamsters, resulting in massive loss of people's wealth. The loss to the people is massive, but the petitioner cannot be kept in pre-trial custody for an unlimited period.

9. There is sufficient primafacie evidence connecting the petitioner with the alleged crime. However, per paragraph 8 of the bail petition, the petitioner has been in custody since 14.09.2022. Per the custody certificate dated 05.08.2024, the petitioner's total custody in this FIR is 01 year 06 months 15 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the primafacie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

10. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

11. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

12. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

13. This order is subject to the petitioner's complying with the following terms.

14. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

15. The concerned Superintendent of Police is to inform the Enforcement Directorate, if not already informed, about the properties mentioned in Para 17 of the reply to enable them to take action to recover the proceeds of crime if used in any of

these properties, and also against all the accused who have received the proceeds of crime.

16. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

17. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

18. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Sonia Puri

Whether speaking/reasoned: Yes
Whether reportable: No.