

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-29285-2024
DATE OF DECISION: 02.07.2024

Versus

STATE OF UT CHD ... RESPONDENT

Present: Mr. Balwinder Singh, Advocate for the petitioner(s).
Mr. Manish Bansal, PP, UT Chandigarh assisted by
ASI Kuldeep Singh.
Mr. Navjit Singh, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked for the grant of regular bail to the petitioner in FIR No. 41, dated 27.04.2023, under Sections 120-B, 408/420/477-A of IPC, registered at Police Station Industrial Area, Phase-I, Chandigarh (Annexure P-1) (Section 420 has been removed by the investigating agency at the time of filing of challan).

2. Learned counsel for the petitioner contends that at the time of the appointment, the petitioner was assigning the job of recording the bills of the stock. He has referred to the letter of appointment dated 27.04.2023 Annexure P-2 in support thereof wherein the relevant clause No.12 is read as under:-

‘12. You will be responsible for the safe keeping and return on our demandin, all the documents movable

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and immovable property, which may be in your custody, charges or given to you for utilization during your employment with us.'

3. He has further argued that the stock for the delivery and supply of goods were managed by one Surya Parkash Shukla who was Incharge of the warehouse and the petitioner has no access inside the warehouse but he has been involved in the instant FIR without any cogent material against him. Counsel for the petitioner has relied upon the order dated 16.06.2023 passed by a Co-ordinate Bench of this Court in CRM-M-30163-2023 vide which the petitioner was declined the relief of anticipatory bail.

4. Learned counsel for the complainant opposes the concession of regular bail urging that the wife of the petitioner is the sole proprietor of M/s Ishani Trading Company who is the beneficiary to the tune of Rs. 1 crore on account of act of omission committed by the petitioner along with other co-accused.

5. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for last 5 months and 11 days who is not involved in any other case.

6. Having heard learned counsel for the respective parties, this Court is of the considered view that since the investigation is complete, challan is presented to the Court and in the challan Section 420 IPC has been removed by the investigating agency itself, meaning

thereby, the essence of cheating has been found missing by the



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prosecution and now Section 408 and 477A IPC are left over, out of which Section 408 is for criminal breach of trust. Considering the nature of allegations and the duties mentioned in the appointment letter which clearly reflects that the petitioner was not engaged for maintaining the receipt and delivery of the stock but was responsible for preparing bills etc. alone and at this stage, where the petitioner has already suffered sufficient period in custody i.e. 5 months and 11 days and as per the principle of the criminal jurisprudence, no one should be considered as guilty till the guilt is proved beyond reasonable doubt, whereas in the instant case, trial is prolonged and likely to take long time in the light of the fact that 22 prosecution witnesses are yet to be examined.

7. Having given considerable thought to the nature of allegations and the role attributed to the petitioner as per clause 12 of the appointment letter which is reproduced above, the petitioner cannot be detained behind the bars for an indefinite period would amount to violation of Article 21 of the Constitution of India and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgement of Apex Court in “***Dataram Singh vs. State of Uttar Pradesh and another***;; (2018) 3 SCC 22”.

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

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9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.
10. Petition is allowed in above terms.

(SANDEEP MOUDGIL)
JUDGE

02.07.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>