2024:PHHC:161913

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29659-2024 (O&M)
DECIDED ON: 04.12.2024

PARVEEN KUMAR @ PARVEEN YADAV @ PRAVEEN KUMAR
.....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-25322-2024

Application is allowed, as prayed for.

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

CRM-M-29659-2024

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.12 dated 10.01.2022, under Sections 120-B, 406, 420, 467, 468, 471 of IPC, 1860 registered at Police Station Manesar, Gurugram.

2. **Facts**

Facts as narrated in the FIR reads as under:-

"Dated 10/01/2022 To, SHO Manesar Guruguram Subject :- COMPLAINT U/S 406, 420, 467, 468, 471, 120-B OF I.P.C. AGAINST [1] PRAVEEN YADAV SON OF SH. KAMAL SINGH, R/O VILLAGE KHURAMPUR KHERA, TEHSIL FARRUKH NAGAR, GURUGRAM. ALSO: VATIKA SIGNATURE VILLA,

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VATIKA INDIA NEXT, SECTOR-82, GURUGRAM. [2] RITU RAJ YADAV SISTER OF PRAVEEN YADAV WIFE OF NAVEEN KHATODIA , R/O NSG CAMPUS MANESAR, GURUGRAM.[3] MAMTA YADAV W/O PARVEEN YADAV R/O VILLAGE KHURAMPUR KHERA, TEHSIL FARRUKHNAGAR, GURUGRAM. ALSO : VATIKA SIGNATURE VILLA, VATIKA INDIA NEXT, SECTOR-82, GURUGRAM. [4] KOSHIA ENTERPRISES PVT. LTD. HAVING ITS REGISTERED OFFICE AT :DSG-2/605, CORPORATE GREENS, SECTOR-74, GURUGRAM, THROUGH ITS DIRECTORS. [5] NAVEEN KHATODIA [BROTHER IN LAW OF ACCUSED PRAVEEN] R/O NSG CAMPUS MANESAR, GURUGRAM. [6] AXIS BANK AND CONCERNED BANK EMPLOYEES OF AXIS BANK, BRANCH: NSG MANESAR, GURUGRAM. [7] KAMAL SINGH, FATHER OF ACCUSED PRAVEEN YADAV. [8] ANY OTHER PERSON SUBJECT TO INVESTIGATION. Hon'ble Sir, The complainant respectfully submits as under : 1. That the complainant is engaged in the business of constructions [REAL ESTATE] is general trading and running a company name and style of RISHAB FARMS INDUSTRIES PVT. LTD. and AURUM PROJECTS PVT. LTD. having working office :- 674, Sector-15, Part-II, Gurugram. 2. That the complainant is moving this application on behalf of the above said company if any. The said documents submitted by the complainant to the accused the said documents are attached herewith as Annexure-6,7,8,9,1011 but despite of compliance of work order was not issued by the complainant. 4. That thereafter on the requisition of accused no. 1 through What's app message as Annexure Afor installation of electric polls including cabling in area 6.2 KM equidistance 25 mtr. each pursuant thereto, the complainant submitted request letter for the same, GST certificate, cancel cheque, EMD cheque of Rs. 95,75,000/-, the said documents attached herewith as Annexure-12,13, 14, 15. Thereafter, all above formalities done by the complainant after receiving L1 dated 02.09.2021, however, the complainant astonished when she received EMD of Rs. 95,75,000/- dated 15.11.2021 by online transfer. Again, it was just to gain the trust of the complainant that everything looking like smooth transactions. In the same manner, above said formalities done by through Annexure -16, 17, 18, 19 and 20 respectively. Despite of the several requests by the complainant to accused no. 1 but accused no. 1 didn't send any work order regarding above said work. 5. That accused no. 1 sent a What's app. Message as Annexure B on 16.11.2021 [work order] for supplying PPGI coated seats/pipes. The complainant complied above said work order alongwith Tax invoices Annexure-21, 22, 23 of Rs. 27,83,620/-, Rs. 51,87,280/- and Rs. 93,81,000/-respectively. The payment regarding above said invoices were made by the accused through RTGS dated 21.09.2021, 30.10.2021 and 29.11.2021. 6. That on the requisition of accused no. 1 through What's app message for supplying dietary proteins, eggs and Paneer pursuant thereto, the complainant submitted request letter for the same, GST certificate, cancel cheque, EMD cheque of Rs. 4,27,98600/-the said documents attached herewith as Annexure-24, 25, 26 27. 7. That on the requisition of accused no. I through What's app message for supplying BLACK DANGREE CLOTH RAYMOND pursuant thereto, the complainant submitted request letter for the same supply order and EMD cheque of Rs. 14,13,84,000/-, the said documents attached herewith as Annexure-28 29. 8. That pursuant thereto no allotment of work letter was given by the accused. The above said EMD money of Rs. 4,27,98600/- 14,13,84,000/- neither return to the complainant by the accused no. 1 nor any work order was given to the complainant by accused no. 1. The accused played a big fraud with big planned conspiracy was hatched by the above said accused and embezzled the amount was used by all the accused for the

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personal purposes and committed forgery, criminal breach of trust and cheating U/s 406, 420, 467, 468, 471 read with section 120-B of IPC. 9. That there was a function in house of accused no. 1 for birth of his child. The said function was attended by the complainant and her son. In the said function accused no. 1 was having presented by his father accused no. 7 that accused no. 1 is an IPS officer presently posted at NSG Manesar, Gurugram on deputation in for that accused no. 7 was also involved in the conspiracy hatched by the accused no. 1 committed big financial fraud having conspiracy to cheat the complainant and several persons by ab-initio the complainant with the several person of the public by huge amount as wrongful loss to the public at large. 10. That above said accused no. 1 introduced himself as a Sr. Officer [IPS] posted as Group Commandant in National Security Guards [NSG] Manesar, Gurugram. There was no reason to doubt the accused no. 1. Identity card was also shown himself Group Commandant by the accused. During all these talk accused no. 5 was present and also present during visit of complainant in campus of NSG Manesar, Gurugram. Accused no. 2 is the real sister of accused no. 1 and accused no. 3 is the wife of accused no. 1 who is posted as Manager in Axis Bank Manesar, where fake and forged account No. 921020000936255 was opened in inconvenience with accused no. 2 on the basis of forged and fake documents. The accused forged documents mentioned in above said Annexures, Accused no. 5 the husband of accused no. 2 was also involved in the crime is one of the conspire in said cheating and fraud is also posted in NSG Manesar as Senior Officer. Some official of above said bank is also involved in committing said offence. It was not possible to open an account in the name of a Wing Defence Service like National Security Guard [NSG]. The inflow and outflow of huge amount of above said forged account would came out during the investigation. 11. That the complainant was to know about the reason for not allotting the work for which amount of EMD deposited. The complainant not receiving any satisfactory reply, the person was doubted and complainant tried to reach out the accused no. 1 but with no result. Thereafter, enquiries were made by the complainant and it was found that accused no. 1 is not an IPS officer nor posted in NSG Manesar as deposed by him. 12. That during the enquiry the complainant found it came out that accused company i.e. accused no. 4 is being controlled and owned by accused no. 1, 3 and 5 it had also been came out that the illegal money received by accused unlawfullyused in purchasing the land properties and luxurious cars. These amount being crime proceed can be attached and from the bank account of the accused. After registration of FIR. During the enquiry it also retrieved several persons were cheated by the accused in tune of Rs. More than 100 Crores. 13. That the accused are not attended call of the complainantand not accessible because they are not at their residential addresses. There is a reasonable apprehension to accused may be flee away from the country after wrongful loss to the complainant and public and wrong full gain to the accused. During the investigation it would came out that how, by whom the forged documents prepared and used with the transactions with complainant and opening of bank account in the name of Defence Wing like National Security Guard [NSG]. It is therefore humble request that an FIR U/S 406, 420, 467, 468 READ WITH SECTION 120-B OF IPC may kindly be ordered to be registered against the accused persons to unearth such a big fraud with public and complainant. You are highly obliged for your anticipation. Thanking you with warm regard, Yours faithfully, Rishab Farms Industries Pvt. Ltd. Aurum Projects Pvt. Ltd. Working Office Add: 674 Sector 15 -I Gurgaon Hr. -122001 Vishali Jain Director of both companies. Today at Police Station on receipt of the aforesaid complaint, offence Us 406, 420, 467, 468, 471, 120B IPC has been

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> *found out. FIR be registered and the copies of FIR be prepared which then be sent through post to higher officer and Ilaqa Magistrate for their perusal. Copy of the case file and original complaint be kept after registration of the case, the investigation of which will be brought into action later on. Note: This case has been registered using the code and in the presence of ASI Satish 516."*

3. <u>Contentions:</u>

On behalf of the petitioner

At the outset, learned counsel for the petitioner submits that the petitioner is in custody since 09.02.2022 and trial is proceedings at snail's pace, wherein out of total 106 prosecution witnesses, none has been examined yet even after framing of charges on 20.03.2023.

<u>On behalf of the State</u>

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. **<u>Analysis</u>**

The petitioner has already suffered incarceration of 2 years, 9 months and 25 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.

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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*

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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

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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

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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

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Meenu

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

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