



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CRM-M-29969-2024 (O&M)
DATE OF DECISION: 13.08.2024

SADDAM
Versus
...PETITIONER

STATE OF HARYANA
... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Rosi, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.
Mr. Khalid, Advocate for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., has been invoked seeking the concession for the grant of regular bail to the petitioner in FIR No.51 dated 11.10.2023, under Sections 419, 420, 406 IPC, 1860 registered at Police Station Cyber Crime, Nuh, District Nuh.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

‘To, The SHO Saheb, Cyber Police Station Nuh. Subject. Fraud against (Account No. 11642191050004 Punjab National Bank Tawadu) and (Account No. 50100556889949 HDFC Bank Tawadu) and (Account No. 39101897042 SBI Bank Tawadu). To withdraw money through ID and Olx and 1. Against the scheme of fraudulently making PIN of (SIM Card No. 9671258032) (SBI ATM No. 6075 3208 6703 8092) (HDFC ATM No. 6521 6602 5636 4157) and threatening to kill. Rahisha s/o Sardar 2. Fakruddin son of Sardar, 3. Saddam son of Rahisha 4. Tarif son of Rahisha 5. Mustaqeem son of Rahisha 6. Sajid son of Rahisha



7. Ajarudeen son of Fajrudin 8. Wasim son of Fakruddin all are residents of Village Bhadganpur, Police station Tawadu, District Nuh. Sir, the applicant submits that: 1. That I, the applicant Rasid, son of Atarakhan is permanent resident of Bhadangpur, Police station, Tawadu, District Nuh. I am illiterate and a very decent man. I don't know anything about net banking, digital banking. I have 2 sons and 6 girls. One of my sons is mentally and physically weak and the other son works in Saudi Arabia. Apart from this, I have run a small shop in a village. I and my children are very decent. A few days ago, I had sold my land for about Rs 35 lakh for the marriage of my 3 daughters, for sending my son to Saudi Arabia and for doing some other business. 2. That both the culprits Rahisha and Fakrudin were also aware of my Rs 35 lakh. To take advantage of my politeness and ignorance, both of them sent their boys after me. Their boys are very clever and eagle-eyed who remain engaged in this work. I was not aware of this. 3. That is, I already had only one account which was in PNB Bank Tawadu. In which I used to transact almost all my money. The money from my sold land also came into the same account. Whereas the culprit Sajid got my account opened in HDFC and SBI bank and misled me and said that uncle does not keep money in one bank, the bank runs away with the money. He applied ATM and credit card to my account without asking me. Told his security code and pin code to his brother Saddam. And then Saddam very viciously took out all the money through Olx. Only Rahisha's entire family is involved in this work. They have also got their wives made with gold and silver jewelry by robbing other poor people of my money. Sajid, Mustaqeem and Tarif all do the work of Olx under the guise of Riya Computer Center near Shiv Mandir near Naya Gaon in Bhiwadi. They have a big gang and the conspiracy also provides training to cut Olx. 4. That is when I went to withdraw money from the account before the girls' marriage, I found about Rs 300 in the account. I was seriously disturbed after hearing this and



gathering courage, I spoke to the bank manager and the manager said that he had been defrauded. I remained silent and after this, with great difficulty, I somehow got the girls married. 5: That is in this regard, I gathered Rahisha, Fakruddin and their family and Villagers and wanted to settle this matter in the Panchayat. Rahisha and Fakruddin, both brothers and also father-in-laws, said that this is our daily work. Once Olx is cut, money is not refunded. If we take further legal action, we will implicate you and your family in a fake case or get you killed. After this, they did the same thing on 20.07.2023 as part of a conspiracy, they hatched a conspiracy against me and my family and in that the culprits got the MLR cut off by lightly injuring Saddam with a sharp edge or any other weapon so that they could put pressure on us by implicating us in a false case can be made. And this conspiracy was made sitting at the house of Rahisha, Mustaqeem, Fakrudin, Ajrudeen and Wasim. And the mastermind of this conspiracy is Tarif because a relative of Tarif is working in Haryana Police. And these people say the same thing. 4. They remain determined and every day they extort money from some decent people by hacking their accounts and committing fraud.6. It is that the above culprits are committing new crimes every day through their laptops and mobile phones at their home. Therefore, I request you to register a case against the above culprit and take strict legal action. Action should be taken and the money withdrawn from the applicant's accounts should be recovered from the culprits. I and my family life and property of children should be protected. It will be so kind of you. Thank you. Dated: 11.10.2023. SD/- Applicant Rasid son of Attarkha resident of Bhadangpur, Police station Tawadu, District Nuh, Hari Mohd. 7027989768.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner has produced a copy of



the representation as submitted to the SHO, Police Station, Sadar Tauru as well as to the SP, District Nuh which has thereafter sent by brother of the petitioner vide speed post dated 31.07.2023.

The stand of the petitioner has further been corroborated by the medical evidence which is already on record dated 20.07.2023 (Annexure P-2). It has been further argued that Azruddin actually arranged the loan of Rs. 2 lakhs for the complainant from Parveen son of Samay Singh on the guarantee of the present petitioner and subsequently complainant did not repay the loan amount. When the petitioner asked the complainant to repay the loan amount, he threatened to kill the complainant on 13.07.2023. Thereafter on 20.07.2023, the petitioner was beaten up by the complainant, as is the case set up by counsel for the petitioner before this Court.

The sole reason for giving beating to the petitioner was also on the asking of Azruddin and regarding repayment of loan a complaint was made to the police as has been stated by counsel for the petitioner as supported by certain documents produced in Court today which are taken on record collectively annexed as Annexure 'A' dated 22.07.2023 that is representation to the SHO, Police Station Sadar Tauru and to the SP, District Nuh.

The statement dated 29.05.2024 to the police was also made by one Tarif who is the brother of the present petitioner as produced before this Court to corroborate the argument raised on his behalf. The said statement is stated to be the true copy by the Deputy



Superintendent of Police, Tauru which is also taken on record and is annexed as Annexure 'B'.

He has further argued that the antecedents of the petitioner are clean and no fruitful purpose would be served by keeping the petitioner behind bars as the conclusion of trial would take a long time as out of total 8 Prosecution Witnesses, none has been examined yet.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 4 months and 14 days.

Learned State Counsel on instructions from the PSI Bhajan Lal opposes the prayer for grant of regular bail but is not in the position to controvert the submissions as made by counsel for the petitioner. He also informs the Court that in the present FIR challan stands presented on 25.01.2024 and charges are yet to be framed.

On behalf of the complainant

Learned counsel for the complainant has disputed and denied the allegations regarding the beatings to the petitioner rather asserts that in fact the petitioner is also a beneficiary as Rs. 1,17,000/- was credited to his account, though could not substantiate the same before this Court by producing any document on record qua the same.

4. Analysis

Be that as it may, it is an admitted position as pointed out



by learned State Counsel that investigation is complete and challan stands presented on 21.05.2024 also out of 8 Prosecution witnesses, none has been examined yet and charges are also yet to be framed.

Therefore, it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 4 months and 14 days and he is not involved in any other case which is sufficient for this Court to infer that the petitioner is not a habitual offender. As per the principle of the criminal jurisprudence, no one should be considered guilty as conclusion of trial is likely to take considerable time keeping in view the status of the FIR mentioned above and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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 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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail under Section 439 Cr.P.C. on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

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

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

13.08.2024
anuradha

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No