

2024:PHHC:161542



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

Sr. No.228

**CRM-M-36958-2024(O&M)
Date of decision : 04.12.2024**

Arif Umrao Shaikh

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Divyam Singh, Advocate, for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.767 dated 18.08.2022, under Sections 120B, 406, 420, 467, 468 & 471 IPC and Section 24 of Immigration Act, registered at Police Station Sadar Karnal, District Karnal.

2. Learned counsel for the petitioner submits that the allegations against the petitioner are that the petitioner along with co-accused committed a fraud of Rs.40,80,000/- on the pretext of sending Ashish, Rahul Neeraj and others abroad and for securing a job there. The petitioner received Rs.4 lacs and transferred the same to the main accused Mohd. Safiq which has been reflected in the account statement. The petitioner has undergone an actual custody of 07 months and 02 days and is not involved in other criminal case. He further submits that similarly situated co-accused Abdul Rauf has been granted regular bail by this Court vide order dated 02.08.2024 passed in CRM-M-17017-2024.

2024:PHHC:161542



3. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He has filed custody certificate in Court and as per custody certificate, the petitioner has undergone an actual custody of 07 months and 02 days, however, he submits that there is no other criminal case registered against him. He on instructions from the concerned investigating officer submits that charges were framed on 04.05.2023 and out of a total of 30 prosecution witnesses, none has been examined till date. He however, contends that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

4. Heard the rival submissions made by learned counsel for the parties.

5. Admittedly, the petitioner has undergone an actual custody of 07 months and 02 days and there is no other criminal case registered against him. Charges were framed on 04.05.2023 and investigation in this case is complete. None of the witness has been examined till date. Similarly situated co-accused Abdul Rauf has been granted regular bail by this Court vide order dated 02.08.2024 passed in CRM-M-17017-2024.

6. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamounts to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in

2024:PHHC:161542



the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

7. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

8. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Therefore, this Court is of the considered view that further incarceration of the petitioner will not serve any purpose.

9. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

2024:PHHC:161542



(IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

(V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

10. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

11. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

04.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No