



CRM-M-40317-2023 and connected cases 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107	(I)	CRM-M-40317-2023 Date of Decision : July 23, 2024	
MALKIT SINGH		V/S	-PETITIONER
STATE OF PUNJAB			-RESPONDENT
	(II)	CRM-M-46061-2023	
SARABJIT KAUR		V/S	-PETITIONER
STATE OF PUNJAB			-RESPONDENT
	(III)	CRM-M-48707-2023 (O&M)	
SAHIL BHATTI		V/S	-PETITIONER
STATE OF PUNJAB			-RESPONDENT
	(IV)	CRM-M-49452-2023	
SONIA		V/S	-PETITIONER
STATE OF PUNJAB			-RESPONDENT
	(V)	CRM-M-50753-2023	
VEENA		V/S	-PETITIONER
STATE OF PUNJAB			-RESPONDENT

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Anil Kumar Spehia, Advocate
for the petitioner (in CRM-M-40317-2023).

Mr. Ashish Soi, Advocate
for the petitioner (in CRM-M-46061-2023).

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Mr. G.P.S. Ghuman, Advocate
for the petitioner (in CRM-M-48707-2023 and
CRM-M-50753-2023).

Mr. Jagjit Singh Lalli, Advocate
for the petitioner (in CRM-M-49452-2023).

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. The amenability of all these petitions for being decided through a common verdict originates from them being arising out of a common FIR, besides common relief(s) being yearned therein.

2. To be precise, in all these petitions, the petitioners seek the relief of them being enlarged on regular bail, in FIR No.03 dated 03.01.2023, under Sections 364-A, 370, 386, 120-B of the IPC, registered at P.S. Balongi, District S.A.S. Nagar

GIST OF THE FIR

3. The genesis of the present FIR is embodied in a statement made by one Sukhwinder Singh son of Amarjit Singh (hereinafter referred to as the 'complainant'). Succinctly stated, the allegations against the petitioners and their co-accused are that, they have duped many gullible people on the pretext of sending them abroad and held them hostages in order to extort money from them. For ready reference, the relevant extract of complainant's statement is extracted hereunder:-

"...I do agriculture work and that my uncle Late Dharam Singh and chacha Paramjit Singh s/o Ami Singh is there. My uncle/Taya's son Kushalpal is there, his son namely Ashutosh Rana has done his 12th class and he used to do agriculture work. On 26.12.2022 Satish Kumar s/o Ajmer Singh r/o Tapriya Kandhola, P.S. Chamkaur Sahib

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Roopnagar called me that my brother Jagdish Singh has reached UAE via Indonesia through a person namely Sunny Thakur s/o Rattan Chand r/o BX 616 Kishanpura Jalandhar. Upon this, I told Satish Kumar that my nephew Ashutosh Rana also wants to go to UAE. Then Satish Kumar talked to my Nephew Ashutosh Rana and he sent him a ticket for Bali City Indonesia on 26.12.2022 and thereafter on 27.12.2022, my nephew went to the Bali City in Indonesia and before going he had taken 4000 dollars. My nephew Ashutosh Rana has reached Bali City in Indonesia. Then he gave me an intimation about his well being on 29.12.2022 through his phone number 7087202082 but now he gave me this message that he along with other persons have been kidnapped, the calls came to my number 98778 75095 and Sunny Kumar Thakur's number 4915215988714 from phone number 6147732621 and 48794279158 and they were asking for ransom of 30 lakh rupees, they gave ICICI Bank A/C no. 631905015784 IFSC Code 0006319 and they asked me to pay the money in this account or in default they threatened to kill my nephew Ashutosh Rana, so we have deposited a sum of Rs. 3,50,000 in the account number. Now they are demanding more money. Now requisite action be taken against these persons who called through phone number 6147732621 and 4879427915 and the account holder of ICICI Bank A/C no. 631905015784 IFSC Code 000631..."

DETAILS OF INVESTIGATION

4. Upon notice(s) becoming issued on these petitions, the respondent-State filed separate status reports/replies, detailing therein the incriminatory material(s) collected by the investigating agency against the petitioners, besides detailing therein the role of petitioners and the manner in which the offence has been committed.

5. The record available before this Court reveals that, it surfaced during investigation that the accused were/are running a crime syndicate, inasmuch as, they allured aspiring innocent people to send them abroad,

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however, instead of sending them to actual abroad destinations, they used to send them to Indonesia, where one Sunny Kumar (brother of accused Sahil) and his allies used to kidnap them and extort huge sums of money from their parents. The illegally detained people were released only after receipt of ransom from their families.

6. In the present case, statements of two victims have been recorded, wherein, they have corroborated the allegations (supra). Moreover, a thorough investigation was conducted, which resulted in total 10 persons becoming arrayed as accused in the present FIR. Out of these 10 accused, 07 accused have been arrested, whereas, 03 accused are absconding.

7. What further emanates from the record is that, during investigation, gold articles weighing 213 grams, ₹ 15,00,000/- cash, 2000 US Dollars have been recovered from the arrested accused. Not only this, 04 immovable properties are also under the process of attachment and the revenue documents/sale deeds of these properties have been seized.

8. After completion of investigation, the Final Report was presented in 2023, but, charges are yet to be framed.

JOINT SUBMISSIONS OF LEARNED COUNSELS FOR THE PETITIONERS

9. The thrust of arguments collectively advanced by the learned counsels representing the petitioners is upon the period of incarceration suffered by the petitioners and the stage of trial. The arguments of the learned counsels for the petitioners can be summarized as under:-

(i) Recovery of gold articles weighing 213 grams, ₹ 15,00,000/- cash and 2000 US Dollars has already been effected by the



investigating agency;

(ii) Petitioners have suffered incarceration of approx. 01 year and 04 months;

(iii) Investigation stands completed, whereupon, the Final Report has also been presented in 2023;

(iv) Trial is yet to commence, as despite the Final Report becoming presented in 2023, charges have not yet been framed, therefore, keeping the petitioners behind the bars for indefinite period would serve no gainful purpose;

(v) The learned trial Court concerned has clubbed the proceedings of the present FIR with FIR No.08 dated 06.01.2023, under Sections 406/420/370/386/364-A/120-B of the IPC, and, Section 13 of the Punjab Travel Professionals (Regulation) Act, 2014, registered at P.S. Sadar Kharar, District S.A.S. Nagar.

(vi) Total number of witnesses cited by the prosecution in both these clubbed FIRs is approx. 90;

(vii) Petitioners' co-accused Vinay Seth @ Golu has already been granted the concession of regular bail by a Co-ordinate Bench of this Court, vide order dated 07.02.2024, drawn upon CRM-M-4773-2024.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. *Per contra*, the learned State counsel has vociferously opposed the grant of regular bail to the petitioners, on the ground that, the petitioners are habitual offenders involved in various FIRs and they are running a huge syndicate in the State of Punjab and other adjoining States. Although the



petitioners have duped a large number of people, but, only a few victims could gather the stregnth to staunchly raise their voice against the fraud committed by them.

11. The learned State counsel has further argued that, in fact, the sphere of crime committed by the petitioners is much larger than reflected in the present FIR, inasmuch as, money to the tune of ₹ 13-14 crores has actually been cheated by the petitioners. He has also argued that, in case, the petitioners are enlarged on bail, they would certainly try to affect the pace of trial and to influence the poor victims, who have showed courage to come forward and depose against them.

12. The learned State counsel has also placed on record the separate custody certificates of the petitioners. For ready reference, the exact period of incarceration suffered by the petitioners, as per their respective custody certificates, is extracted hereinafter:-

Sr. No.	Name of Petitioner	Actual Undergone Period
1.	Malkit Singh @ Mika	01 year, 03 months and 22 days
2.	Sarabjit Kaur	01 year, 03 months and 21 days
3.	Sahil	01 year, 05 months and 07 days
4.	Soniya	01 year, 03 months and 21 days
5.	Veena	01 year, 05 months and 07 days

13. Moreover, on instructions imparted to him by S.I. Harbhej Singh, the learned State counsel has verified that charges are yet to be framed.

ANALYSIS

14. Before embarking upon the process of evaluating the arguments addressed by the learned counsels for the parties and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant legal propositions.

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15. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535***. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

16. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

17. In ***“Gurbaksh Singh Sibbia v. State of Punjab”, (1980) 2 SCC 565 at 586-588***, the purpose of granting bail is set out by the Hon’ble Supreme Court with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King Emperor, AIR 1924 Calcutta 476 (479, 480) that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases observations are to be found regarding the right to bail which



deserve a special mention. In K.N. Joglekar v. Emperor, AIR 1931 Allahabad 504 (SB) it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the Court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. H.L. Hutchinson, AIR 1931 Allahabad 356 at p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which bind the High Court, having regard to the fact that the legislature itself left the discretion of the Court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

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29. In Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 it was observed by Goswami, J., who spoke for the Court, that "there cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail".

30. In American Jurisprudence (2d, Vol. 8, page 806, para 39) it is stated :

"Where the granting of bail lies within the discretion of the



court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end."

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

18. Also, in ***"Gudikanti Narasimhulu and others Versus Public Prosecutor, High Court of Andhra Pradesh"***, 1978 AIR (Supreme Court) 429, the Hon'ble Supreme Court, speaking through Krishna Iyer, J., has enunciated the principles of bail thus :

"9. Thus the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record-particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habitual, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the member of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance.

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of



freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice - to the individual involved and society affected.

11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted. mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, 'community roots' of the applicant are stressed and, after the Vera Foundation's Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable condition, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

12. A few other weighty factors deserve reference. All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated, and playing foul with public peace by tampering with evidence, intimidating witnesses or committing offences while on judicially sanctioned 'free enterprise', should be provided against. No seeker of justice shall play confidence tricks on the court or community. Thus, conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution.

13. Viewed from this perspective, we gain a better insight into the rules of the game. When a person, charged with a grave offence, has been acquitted at a stage, has the intermediate acquittal pertinence



to a bail plea when the appeal before this Court pends? Yes, it has. The panic which might prompt the accused to jump the gauntlet of justice is less, having enjoyed the confidence of the court's verdict once. Concurrent holdings of guilt have the opposite effect. Again, the ground for denial of provisional release becomes weaker when the fact stares us in the face that a fair finding if that be so - of innocence has been recorded by one court. It may not be conclusive, for the judgment of acquittal may be ex facie wrong, the likelihood of desperate reprisal, if enlarged, may be a deterrent and his own safety may be more in prison than in the vengeful village where feuds have provoked the violent offence. It depends. Antecedents of the man and socio-geographical circumstances have a bearing only from this angle. Police exaggerations of prospective misconduct of the accused, if enlarged, must be soberly sized up lest danger of excesses and injustice creep subtly into the discretionary curial technique. Bad record and policy prediction of criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the court into a complacent refusal."

19. This Court has heard the rival submissions made by the learned counsels for the parties and perused the record. Be that as it may, this Court is of the view that the present petition deserves to be allowed for the following reasons:- (i) undisputedly, the petitioners have suffered incarceration of approx. 01 year and 04 months; (ii) there is no likelihood of the trial concluding anytime soon, inasmuch as, charges are yet to be framed in the present case and the learned trial Court concerned has clubbed the proceedings of the present FIR with FIR No.08 (supra); (iii) prosecution has cited 35 witnesses in the present FIR and 61 witnesses in FIR No.08 (supra); (iv) gold articles weighing 213 grams, ₹ 15,00,000/- cash and 2000 US Dollars has already been recovered by the investigating agency. For all these reasons, this Court believes that subjecting the petitioners to



prolonged incarceration would serve no fruitful purpose.

20. Insofar as grant of regular bail to petitioners' co-accused Vinay Seth @ Golu is concerned, this Court is not examining as to whether the petitioners are on parity with him or not, inasmuch as, the allegations in the present FIR are that all the accused have collectively, in furtherance of their conspiracy, duped many victims.

21. Therefore, without commenting upon the merits and circumstances of the present case, the present petitions are **allowed**, however, subject to the conditions enumerated hereinafter.

(i) The petitioners shall forthwith, in case they possess, deposit their respective passports with the learned trial Court concerned;

(ii) The petitioners shall not cause any impediment or adopt any dilatory tactics, vis-a-vis, absenting themselves one by one from the trial proceedings, thereby causing delay in conclusion of the trial;

(iii) The petitioners shall not, except for strong and compelling reasons, absent themselves from the trial proceedings. In case they do so, the learned trial Court concerned shall pass appropriate orders warranted under law against them. Moreover, thereafter the issue of grant of bail to the petitioners would be considered only after examination of all the prosecution witnesses;

(iv) In the event of the petitioners making any attempt to influence or threat any of the victims/witnesses cited by the prosecution, the same shall be construed to be violation of the terms and conditions of bail and then the respondent-State would be at liberty to institute an appropriate motion, thus seeking cancellation of bail granted to the petitioners.

22. The petitioners are ordered to be released on bail on furnishing



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of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

23. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petitions only.
24. Pending application(s) stand disposed of accordingly.
25. A photocopy of this order be placed on file of each connected case.

July 23, 2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No