

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210-CRM-M-40363-2023

Date of Decision: 07.02.2024

Ashminder Kaur

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sourabh Singla, Advocate for the petitioner

Mr. Sanish Girdhar, AAG Punjab

Mr. SK Yadav, Advocate for the complainant

Sandeep Moudgil, J. (Oral)

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., for grant of regular bail to the petitioner in FIR No.0093 dated 29.03.2023 (Annexure P-1) under Sections 406/420/467/468/471/120-B IPC, registered at Police Station Zirakpur, District SAS Nagar.

Learned counsel for the petitioner contends that there is no incriminating material or evidence available with the prosecution to connect the petitioner with the alleged offences. He also asserts to say that nothing has been recovered from the petitioner and the entire case is based on documentary evidence and that too, the present case being of civil nature has been sought to be given a criminal colour. It is further argued on her behalf that merely she is holding a joint bank account with her husband/co-accused, she has been nominated in this FIR as an accused.

On the other hand, learned State counsel has produced the custody certificate of the petitioner dated 07.02.2024, which is taken on record, to demonstrate that he has suffered incarceration for a period of 10 months and 09

days. He further argues for dismissal of regular bail in the instant petition making an effort to contend that since the amounts have been transferred through bank transaction, it was for the petitioner to explain as to for what purpose these amounts were taken. He informed that investigation is complete; charges were framed on 03.02.2024 and out of total 49 witnesses, none have been examined so far.

Counsel for the complainant vehemently contended that it is the petitioner who introduced to him and out of the amount paid by him on account of sending students abroad, she has withdrawn Rs.40 lakhs from that account and there is no joint account as is being alleged before this Court on behalf the petitioner.

Since the petitioner has already suffered custody for more than 10 month and the story of the prosecution is yet to be established by leading cogent evidence added with the fact that the petitioner has not been found involved in any other case and thus not a habitual offender, it becomes abundantly clear that the trial will take certainly long time to conclude since out of 49 witnesses, none have been examined so far, and in such a situation, detaining the petitioner 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***”.

Therefore, taking into consideration the totality of the circumstances as also the fact that the trial is likely to take some time, therefore, no fruitful purpose will be served by keeping the petitioner behind bars, this petition is allowed and the petitioner is directed to be released on regular bail on

furnishing bail and surety bonds to the satisfaction of the Chief Judicial Magistrate/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.

07.02.2024
V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No