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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42387-2024
DECIDED ON: 04.09.2024

VIKAS ALIAS VIKAS KUMAR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Raghav Gulati, Mr. Kamal Gupta, Advocates,
Mr. Gurpreet Singh and Mr. Varun Sharma, Advocates
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief sought**

The jurisdiction of this Court has been invoked for the third time under Section 483 BNSS for grant of regular bail to the petitioner in FIR No.0061, dated 15.03.2024, under Sections 420, 406, 467, 468, 471, 506 and 120-B IPC (offence under Section 201 IPC added later on), registered at Police Station Sadar Kharar, District SAS Nagar, Mohali, Punjab.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

"Copy of complaint. "To, S.H.O. Sahib, IS Sadar Kharar, District S.A.S. Nagar (Mohali) • Subject: - Complaint against 1) Neha Sharma @ Neha Kaur (M.D.) Hawk

Real Estate (Mob. No. 70871-11353, 98720-01924), 2). Vikas, residents of Sunny Enclave, Sector-123, Kharar, District S.A.S. Nagar (Mohali), 3) Tejinder Singh son of Onkar Singh resident of Village Mullanpur Garibdass, District Mohali for committing fraud with complainant by preparing forged and fabricated documents and giving threats to kill. Sir, Requested that I, Ajay Kumari wife of Sher Singh am resident of House No. 117, Ward No. 3, Block-8, Gobind Nagar, Una, Himachal Pradesh. That the above mentioned accused gives advertisements for sale-purchase of houses by making page on the name of Hawk Real Estate at social media and on seeing their advertisements we had sent message to them. Thereafter, Vikas and Tejinder Singh had contacted me and had given assurance to us that they shall facilitate sale of good house at reasonable price to us. They sent photos of houses on our mobile phone and then they called us at their office Hawk Real Estate, Sunny Enclave, Sector-123, Kharar for showing houses to us. I and my son Atul Rana had visited their office on dt. 23.12.2023, where, they introduced us with Neha Sharma @ Neha Kaur who had introduced herself as M.D. of company. Above mentioned accused Vikas, Tejinder Singh and Neha Sharma @ Neha Kaur took us alongwith them and showed us two-three houses including one House No. 26, 2 BHK, Area 125 Square Yrd, Sector-123, Sunny Enclave, Kharar and Neha Sharma showed us one agreement of full and final payment of her name and said that I have paid total sale consideration amount of this house to the owner of this house and she said that I shall give its copy to you at the time of executing agreement and she assured us that she is owner of above mentioned house and this house is fully furnished and is on sale with furniture, fridge, A.C. etc. We saw that house from inside and *outside and we liked NER DENT LA, the house and Neha Sharma @ Neha Kaur said to us that the price of this house alongwith said household goods/appliances is Rs. 80 Lac. Deal was fixed between us and we asked Neha Sharma to execute agreement of above mentioned house and Neha Sharma asked us to pay firstly Rs. 20,00,000/- as token money. We demanded few days' time to pay this amount and then Neha Sharma asked us to pay Rs. 21,000/- as token money. Whereupon, at the instance of Neha Sharma and other accused I transferred Rs. 21,000/- in Neha Sharma's account through GooglePay from my son. Atul Rana's account vide UPI ID 372396293284. Afterwards, at the instance of Neha Sharma and other accused I transferred balance amount Rs. 19,79,000/- in Neha Sharma's account through bank transfer as under, Rs. 16,00,047/- vide RIGS on dt. 27.12.2023, Rs. 79,000/- with UPI ID 336588379551 on dt. 31.12.2023, Rs. 50,000/- on dt. 31.12.202.3, Rs. 2,50,000/- from my and my son Atul Rana's acccunt on dt. 01. 01.2024, accordingly transferred total Rs. 20,00, 000/- in Account No. 2302252250715294 of Neha Sharma's firm Hawk Real Estate at AU Small Finance Bank. That after paying this amount we asked Neha Sharma to execute sale agreement of house with us. Initially she gave us excuses but on our repeated insistence she called us at her office on dt. 02.01.2024 for executing sale agreement and from there above mentioned accused took us to Tehsil Complex Kharar and there they got scribed sale agreement and Neha Sharma gave signatures on sale agreement as owner in presence of witnesses and dt. 01.07.2024 was fixed for registration of sale deed. Copy of sale agreement is attached herewith. After few days we demanded documents from Neha Sharma pertaining to her ownership of said house* *for taking loan but she started making excuses and after few days she stopped answering our phone calls. Due to her acts we became suspicious when we visited her office to talk to her then we could not find her there. Then we visited the said house and inquired from neighbors and we came to know that Neha Sharma is not even the owner of this house nor she had any attorney etc. to execute sale agreement of said house. Thereafter, when we visited the office of the accused again and again and spoke with them then Neha Sharma gave us four cheques i.e. Cheque No. 022765 Rs. 5 Lac, 022766 Rs. 5 Lac, 022767 Rs. 5 Lac, 022768 Rs. 5 Lac IndusInd Bank, Branch Sector-70, Mohali and assured us that these cheques shall be cleared upon presenting in the bank and we shall get back our amount, but when we presented these cheques in bank then all these cheques got bounced on dt. 30.01.2024. When we contacted the accused then they gave threats to us that if we demand money from them again or visit their office then they shall kill us. Above mentioned Neha Sharma @ Neha Kaur in connivance with co-accused Tejinder Singh and vikas by preparing and executing forged and fabricated sale agreement with us and by impersonating as owner of house has committed fraud of Rs. 20,00, 000/- Lac with us and has deceived us and has given threats to kill us. We have doubt that owner of above mentioned house has also connived with them in this conspiracy. Requested that strict action be taken against above mentioned accused and justice be given to us. Yours sincerely, Sd/- Ajay Kumari wife of Sher Singh resident of House No. 117, Ward No. 3, Block-8, Gobind Nagar, Una, Himachal Pradesh, Mob. No. 98162-48609." Police Proceedings:- Today I, ASI was present at police station and MHC produced one Complaint No. 628/5D/PS Sadar Kharar*

> *Dt. 15. 03.2024 given by Ajay Kumari wife of Sher Singh resident of House No. 117, Ward No. 3, Block-8, Gobind Nagar, Una, Himachal Pradesh, which was marked by SHo for proceedings, alongwith complainant before me. Enquiry was conducted to verify the facts of the complaint. After enquiry, facts of the complaint were found to be genuine. Erom contents of complaint, prima-facie offence punishable under sections 420, 406, 467, 468, 471, 506,120-B IPC is made out. Therefore, complaint is being handed over to MHC for registration of FIR against Neha Sharma @ Neha Kaur M.D. Hawk Real Estate and Vikas residents of Sunny Enclave, Sector-123, Kharar and Tejinder Singh son of Onkar Singh resident of Village Mullanpur Garibdass, Mohali under above mentioned sections. Number be intimated after registration of FIR. Intimation be given to Incharge Control Room. I, ASI alongwith ct. Gurpreet Singh 2123/SASN and L/Ct. Mandeep Kaur 1810/SASN and complainant am departing for the place of occurrence. Now present at PS Sadar Kharar at 11:10 AM. Sd/- ASI Kulwinder Singh PS Sadar Kharar Date 15.03.2024."*

3. **Contentions**

On behalf of the petitioner

Learned Senior counsel for the petitioner contends that the petitioner was neither the signatory to any agreement to sell nor he was the beneficiary of the amount paid by the complainant. He further contends that the petitioner was an employee of the main accused Neha Sharma, who is the owner of the firm namely Hawk Real Estate. He has relied upon a bank entry dated 06.09.2023 (Annexure P-8) and submits that the petitioner was drawing salary from the said company. It has been asserted on behalf of the petitioner that he is ready and willing to join the investigation and cooperate with the investigating agency.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He submits that as per the FIR, the petitioner was working on commission basis as well apart from drawing the salary but on a specific query put by this Court, he could not put forth any incriminating material to support the assertions that the petitioner was beneficiary in any manner directly or indirectly except being an employee of Neha Sharma, the main accused who was receiving salary in bank account alone, as has been argued by Mr. Sidhu, learned Senior counsel for the petitioner.

4. **Analysis**

Be that as it may, considering the submissions made hereinabove and the facts that the petitioner has suffered incarceration for a period of 05 months and 10 days; the petitioner is not a habitual offender as he is not involved in any other case, as is evident from custody certificate added with the facts that investigation is complete, challan stands presented to Court on 12.06.2024, charges are yet to be framed and total 16 prosecution witnesses are yet to be examined, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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.*
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> *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.*
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> *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.*
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> *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 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 discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on his 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)
04.09.2024 **JUDGE**

Poonam Negi

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