



CRM-M-44616-2023

1

214

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44616-2023
Date of Decision: 19.09.2024

Somdev Khola
...Petitioner

Versus

State of Haryana
...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:-. Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Anmol Malik, DAG Haryana

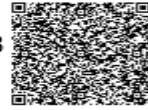
KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.890 dated 26.12.2019, under Sections 420, 406, 120-B IPC and Section 3 of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 registered at Police Station Model Town, District Rewari, Haryana.

2. The facts of the present case are that it is alleged in the complaint moved by Parvinder alleging that Somdev Khola-petitioner and other co-accused persons were operating company under the name and style of Solarway Marketing India Private Limited having its head office in District Rewari. The company assured 100% subsidy and cash back on installation of solar panels and batteries.

In the month of February 2018, accused/petitioner Somdev and his brother Prithvi

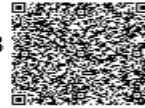
Raj Khola visited the house of the complainant and made the complainant as

**CRM-M-44616-2023****2**

member of the network marketing company and the complainant, his known persons and relatives invested Rs. 30,00,000/- but the accused supplied them solar panel and batteries worth Rs. 10,00,000/- only and the accused had assured to supply the remaining material in future. Later, the complainant as well as his 70 employees did a business of Rs. 70,00,000/- in favour of the company, but the company did not supply them solar panel, inverter etc. In this manner accused embezzled lacs of rupees of innocent public.

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case. The petitioner has been in custody for 02 years, 01 month and 28 days, despite the investigation having been completed and charges having been framed on 15.12.2022. The trial is progressing at a snail pace and out of 42 prosecution witnesses, none has been examined till date. He further submits that co-accused Prithvi Raj has been granted the concession of regular bail by the learned trial Court vide order dated 20.01.2023 and co-accused Saroj has been granted the concession of regular bail by this Court vide order dated 30.09.2021 passed in CRM-M-11964-2021.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 02 years, 01 month and 28 days. He further submits that there are 16 more cases registered against the petitioner, however, 11 cases are under Section 138 of the Negotiable Instruments Act, in which he is on bail and three cases stand cancelled registered in Rajasthan. He further the charges in the present case were framed on 15.12.2022 and out of 42 prosecution witnesses, none has been examined. He, however, submits that



CRM-M-44616-2023

3

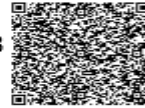
there are serious allegations against the petitioner and he is not entitled to the concession of regular bail.

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

6. The charges were framed on 15.12.2022 and out of total 42 prosecution witness, none has been examined till date. The petitioner has undergone actual custody of 02 years, 01 month and 28 days. Further detention of the petitioner will not serve any useful purpose and will be 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 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. As regards the submission of learned State counsel that petitioner is involved in other/one more criminal case(s), reference is placed upon the judgment of the Hon'ble Supreme Court in *Maulana Mohd. Amir Rashadi Vs. State of U.P. and another*, 2012 (2) SCC 382 in which, it is held that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground

**CRM-M-44616-2023****4**

that the petitioner is involved in other/another case(s). The relevant portion of the said judgment is reproduced herein-below:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

9. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges were framed and none of the prosecution witness has been examined till date. The petitioner has undergone actual custody of 02 years, 01 month and 28 days. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

10. Without commenting anything on the merits of the case, lest it ramay prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on her 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.



CRM-M-44616-2023

5

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

11. 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.

12. 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.

(KIRTI SINGH)
JUDGE

19.09.2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No