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

CRM-M-44536-2024

Date of Decision: September 20, 2024

AMANDEEP SINGH**....Petitioner(s)****VERSUS****STATE OF PUNJAB****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Gautam Dutt, Advocate with
Mr. Mehtab Kamboj, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 has been invoked seeking the concession of regular bail for the petitioner in FIR No.510 dated 24.12.2023, under Sections 406, 420, 465, 467, 468, 471 and 120-B IPC registered at Police Station Sohana, SAS Nagar, Mohali (Punjab).

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

'The Additional Chief Administration, GMADA, Room no. 226, PUDA Bhawan, Sector 62 Mohali, SAS Nagar 160062, Subject: Cancellation of CLU obtained by Nitin Khetan (for Funex Infra Pvt Ltd.) who mislead your office using forged documents of Rajmohan Kaur (Trust) - Kindly scrutinize documents of CLU (vide letter no: 2095 DTP SAS Nagar dated 03.11.2022) on urgent basis. Respected Sir, Since past one month have been running pillar to post, visiting various offices of GMADA and facing total non-cooperation from



various GMADA offices located at PUDA Bhawan, Sector 62, Mohali (SAS Nagar). A short while ago, on my regular visits to my land located at village Kailon, Mohali, having khata no. 14/14, 119/144, khasra no. 38//2 (8-0), 3(8-0), 8(1-15), 10(7-16), 36//19/1 (2-2), 23(8-0), 22(8-0), 38//9(4-4), 38//11(2-0), 39//15/2(2-17), measuring 49 Kanal 9 Marla owner Rajmohan Kaur, The Anabhau Foundation Charitable trust, I saw a labourer holding map of "Khetan English County" Project Map and pamphlet showing CLU (vide letter no: 2095 DTP SAS Nagar dated 03.11.2022) at Sirhind-Chunni Road near our land. When I inspected the map, it was showing our land as part of "Khetan English County" Township project by Funex Infra Private Limited which had plots, parks and roads. Upon asking the labourer who gave them permission to show our land as part of their project he ran away. Since then I have been visiting various offices of yours but no one has answered my queries for reasons best known to them. I never gave any permission to anyone to include my land in their project. It seems Nitin Khetan for Funex Infra Private Limited / Khetan Realty has obtained CLU for their project using forged documents in your office. Kindly provide to me a copy of such documents so I can initiate suitable action as per law. If still no action is taken by your office, then I will have no other option but to go to Police Officials, Punjab Vigilance Bureau and the Hon'ble Court against you as it is my suspicion that Nitin Khetan carried out this fraud using forged documents and GMADA issued the CLU without verifying the owner (Rajmohan Kaur, Trust) of the land, neither did you verify the persons whose consent letters was used, nor any official of your office informed the owner (Rajmohan Kaur, Trust) about it. I hope you will take my final request into consideration and take prompt action. Any delay in action by you can cause massive damage to my rights and it my humble prayer to you to please do not waste one more second and handle my request on a priority basis. look forward to hearing from you and request you to send all communication my mobile no. 9569999556 through call / Whatsapp and email es.ekjotsingh@gmail.com. I will only accept



communication/notice/queries sent at the above listed by your office as it will allow me to communicate....'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner contends that the allegation against the petitioner is that he is not authorized to issue the resolution dated 08.12.2021 (Annexure P2) and letter of consent dated 22.02.2023 (Annexure P3) on account of not being the trustees and/or chief patron of the trust. The petitioner is ready to hand over the original copy of the resolution (Annexure P2) for forensic examination.

He submits that in fact the de facto complainant Mrs. Rajmohan Kaur had resigned from the trust on 19.05.2021 and she had no locus standi or interest into the affairs of the trust on the date of execution of the above resolutions (Annexures P2 & P3), however, she is insinuating that she never resigned from the Trust and the resolution dated 8.12.2021 and letter of consent have been issued without any jurisdiction or authority and as against her allegations, the said Rajmohan Kaur never challenged the validity of the said documents.

It is vehemently urged that there is no allegation qua the petitioner in having any role for fraudulently obtaining CLU for the land of the trust and these allegations have been attributed against Kanwaljet Singh Walia, Director of M/s RKM Housing and Nitin Khetan, Director of M/s Funex Infra P.Ltd. and these accused persons have been already granted the concession of anticipatory bail by this Court vide orders dated 14.05.2024 and 05.08.2024 passed in CRM-M-24123-2024 and CRM-M-37340-2024, respectively.

**On behalf of the State**

Notice of motion.

On the asking of the Court, Mr. Jaspal Singh Guru, AAG, Punjab accepts notice. Mr. Ashutosh Gupta, Advocate has put in appearance on behalf of the complainant. They opposed the prayer made on behalf of the petitioner for grant of regular bail to him on the ground that the petitioner along with co-accused persons have forged the documents and committed fraud with the complainant. The Trust being a family Trust makes it unbelievable as claimed by the petitioner that there will be no Trustee from the said family, which was there earlier and as such, a big fraud has been committed and the Trust deed, which was in existence creating the Trust, has been superseded by allegedly involving the persons outside the family of the Trust and by forging the documents.

It is argued that it is highly unbelievable that the trustees of the Trust, who are all family members will sell or transfer their land without getting any consideration and there is no proof of any consideration being transferred to the original trustees or any of their family members inasmuch as the documents of the Trust and their resignation letters have been forged.

Another argument raised on behalf of the complainant is that the family members remained trustees for almost 19 years and suddenly resign and total strangers to the family are appointed as trustees of the Trust whereas the original trustees did not pay any amount for the land which they purchased 19 years back. He further averred that the Power of Attorney executed by Rajmohan Kaur is not a forged document. In fact the petitioner has obtained the CLU on the basis of a forged consent letter purported to be given by the

complainant.



4. Analysis

The case projected and argued by the learned counsel for the petitioner is that the accused have been falsely implicated in the present case on the basis of the complaint sent by the subordinate officer of the GMADA, though the Chief Administrator, GMADA had rejected the complaint, which has been made the subject matter of the FIR. The specific allegations in the FIR are that the signatures of Rajmohan Kaur have been forged and the forged documents have been used. Before sending the letter for the registration of the FIR, the detailed inquiry has also been conducted and the opportunity to the accused side to appear was given.

As can be seen that while obtaining CLU in the year 2016, RKM Housing P.Ltd. produced the consent letter containing forged signature of Raj Mohan Kaur. Whether or not the petitioner had any role to play in obtaining the CLU issued in the name of RKM Housing P.Ltd. is yet to be ascertained and even if it is assumed that if any forgery was done in getting the CLU, even then the petitioner cannot be held liable.

Surprisingly, if any forgery was done in getting the CLU, it is not understandable as to why Raj Mohan Kaur, alleging herself to be chief patron of the Trust, kept mum till 2023 and no objection was raised at the time when public notice was issued by the GMADA at the time of issuance and/or transfer of CLU to RKM Housing P.Ltd.

As regards the resolution dated 15.06.2021 relied upon by the complainant, it cannot be said that vide the said resolution any trustee have resigned or any new members were inducted as new trustees. Moreover, the said resolution was never challenged.



Be that as it may, looking into the totality of the facts, this Court is conveniently of the view that a dispute has arisen out of Real Estate Business between the petitioner and the complainant and the allegation with regard to the forged and fabricated can be tested and examined by leading evidence at an appropriate stage during the course of investigation, thus, the custodial interrogation of the petitioner is not required.

In view of the discussions made hereinabove as also the fact that the co-accused to the petitioner, namely, Nitin Khetan and Kanwaljit Singh Ahluwalia who are the main accused are already given anticipatory bail; also the petitioner has already suffered sufficient period in custody i.e. 01 month 10 days and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, whereas in the instant case, challan has not been presented, which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and detaining the petitioner behind the bars for an indefinite period would solve no purpose.

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.

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.

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.

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 the 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 aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 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)
JUDGE

20.09.2024
Sangeeta