



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46110-2024

Date of Decision: September 20, 2024

JOGINDER SINGH ALIAS JOGINDER THAKUR

....Petitioner(s)

VERSUS

STATE OF PUNJAB

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.K. Chaudhary, Advocate
for the petitioner.
Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J.(ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked seeking the concession of regular bail for the petitioner in FIR No.0206 dated 05.10.2021, under Sections 420, 465, 466, 467, 468, 471, 120-B IPC and Section 201 enhanced vide GD No.2 dated 11.07.2022, registered at Police Station City Sujanpur, District Pathankot.

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

'Inquiry report: 1) Suresh Mahajan son of Satpal Mahajan, 2) Shweta Mahajan wife of Suresh Mahajan C/o Subhash Mahajan



Karyana Store, Baimial, Pathankot had filed a petition No. CRM-M-29249 of 2021 in the Hon'ble Punjab and Haryana High Court, Chandigarh and during the hearing of said case, the Hon'ble High court has passed the order dated 28.07.2021, which is as follows: "In view of above, the present direction petition to is disposed respondent No. of 4- with the Inspector General of Police, Border Range, Amritsar, to take into and decide representation dated NIL (Annexure P-2 and P-3), representations dated 23.09.2020, (Annexure 20.01.2021 to P-9, and 28.04.2021 respectively) In P-7 accordance with law by passing speaking orders and that too within two months positively from the date of receipt of copy of this order." In compliance with the order dated 28.07.2021 passed by the Hon'ble High Court, Chandigarh, the undersigned has perused the copies of representations mentioned and enclosed with the petitioner. The petitioners allegations in their has leveled representations that respondents Manoj Kumar etc. have got executed the sale deeds of land owned by them measuring 1 Kanals 12.37 Marlas situated in village Mamoon, District Pathankot by making a fake person and a lady stand in place of Suresh Mahajan and Shweta Mahajan, which is cheating with them. With regard to the leveled by the petitioners allegations in their application, respondents and other concerned persons havebeen joined in the inquiry and their statements have been recorded, the detall of which is as follows: Petitioner party: Petitioner Suresh Mahajan son of Satpal Mahajan resident of house No. 25, First Floor, Block A- 2,, Sector 17, Rohini, New Delhi, aged about 52 years, mobile No. 88106-97758 has stated by joining the Inquiry that I am resident of above noted address and I have transport business. I have trucks and my business of transport if spread in Punjab, Himachal Pradesh and Jammu Kashmir. I came to your office on being called by you with regard to petition No. CRM-M-29249 of 2021 filed by me. Manoj Kumar son of Shambhu Dutt son of Nathu Ram resident of village Jaash, Post Office Bansa Bajeera, Tehsil Nurpur District Kangra, Himachal Pradesh was running Karyana shop. Since I have business of transport, therefore, above said Manoj Kumar the sale deeds of land owned by them measuring 1 Kanals 12.37 Marlas situated in village



Mamoon, District Pathankot by making a fake person and a lady stand in place of Suresh Mahajan and Shweta Mahajan, which is cheating with them. With regard to the leveled by the petitioners allegations in their application, respondents and other concerned persons have been joined in the inquiry and their statements have been recorded, the detail of which is as follows: Petitioner party: Petitioner Suresh Mahajan son of Satpal Mahajan resident of house No. 25, First Floor, Block A- 2,, Sector 17, Rohini, New Delhi, aged about 52 years, mobile No. 88106-97758 has stated by joining the Inquiry that I am resident of above noted address and I have transport business. I have trucks and my business of transport is spread in Punjab, Himachal Pradesh and Jammu Kashmir. I came to your office on being called by you with regard to petition No. CRM-M-29249 of 2021 filed by me. Manoj Kumar son of Shambhu Dutt son of Nathu Ram resident of village Jaash, Post Office Bansa Bajeera, Tehsil Nurpur District Kangra, Himachal Pradesh was running Karyana shop. Since I have business of transport, therefore, above said Manoj was taking material of Karyana from me since the year 2004-05. During that period I got friendly with Manoj Kumar above said and I also started visiting at the house of Manoj Kumar and we developed good relations with each other. There is Godown (land) measuring 1 Kanal 12 Marlas in my name and land measuring 1 Kanal 6 Marlas Godown (land) in the name of my wife Shweta Mahajan within the area Pathankot. The detail of of Mamoon, which is: land measuring 1 Kanal 12.37 Marlas total 6674 Sq. feet comprised in Khasra No. 2248 (5-11) to the extent of 16/111 share i.e. 0-16 marlas and land measuring 7.37 Marlas to the extent of 737/32100 share of Khasra No. 2162/1share of total land measuring 27 Kanals 6 Marlas comprised in Khasra no. 2245 Min East (26-18)- 2245 Min-West (0-8). In this way, the land measuring 12.37 Marlas situated in front of Canada Palace, Gaushala Road is in the name of my wife Shweta Mahajan and she is owner of the land situated in the area of Mamoon Cant, Pathankot measuring 1 Kanal 6 Marlas to the extent of 26/1239 share total land measuring 61 Kanals 19 Marlas bearing Khewat No. 101 Khatoni No. 1348 Khasra No. 2247/1 (5-11), 3201/2522/2568 (56-8) Kite 2. In the year 2015-16, I



faced huge loss in the business, due to which I went into depression and since I was having family relations with above said Manoj Kumar therefore the photocopies of papers of above said property owned by me and my wife Shweta Mahajan and keys of the lock put on above said land were given to Manoj Kumar above said, in order to sell this land by finding any suitable customer and also show this land to the customer as and when SO required. On passing of long time, I kept on asking Manoj Kumar above said regarding the sale of above said land but he kept on dilly-dallying the matter, due to which I had doubt on Manoj Kumar. I inquired about it and in the year 2017 I came to know that the above said land measuring 1 Kanal 12.37 Marlas which was in my name has been sold by above said Manoj. Kumar, by making his friend Raman Kumar son of Vishwa Nath caste Brahman, resident of Shivaji Nagar, Street No.2 Dhangu road Pathankot, stand in my place on 04- 02-2016 and vide of Rs. 19,50,000/-. At the time of execution of above sale deed, Raman Kumar stood in my place and above mentioned Manoj Kumar got his photo clicked as purchaser with the sub registrar. Vijay Kumar son of Kishan Chand resident of village Gho Awadi Mangani Jugial Pathankot and Amarjit Singh Numberdar son of Girdawari Lal resident of Ward No. 8, Vishnu Nagar, Lamini near Maharaja Palace, Pathankot have put their respective witnesses. Apart from it, Manoj Kumar son of Shambhu Dutt son of Nathu Ram resident of village Jaas post office Bansa Bajera, Tehsil Nurpur District Kangra, Himachal Pradesh, Police Station Nurpur had got the sale deed executed of the land measuring 1 Kanals 6 Marlas owned by my wife Shweta Mahajan, in the name of Neetu Bala daughter of Ashok Kumar resident of house No. 3140, Bazar Hakimian, Amritsar on 04.02.2016, by presenting his wife Renu Sharma wife of Manoj Kumar in place of my wife Shweta Mahajan, vide stamping certificate No. IPNB 01680838913500-A. At the time of execution of above sale deed, Vijay Kumar son of Kishan Chand resident of village Gho-Awadi, Mangani Jugial road and Amarjit Singh Numberdar son of Girdari Lal resident of Ward No. 8, Vishnu Nagar, Lamini near Maharaja Palace, Pathankot have put their respective witness. In this regard I had given complaint/representation No.2135-



Peshi dated 26.10.2017 Police, to the Senior Superintendent of In Pathankot. this regard, our compromise was effected in the year 2018 and as per this compromise, Manoj Kumar has admitted that he will return the amount of above said land within 1 14 years (one and half years). In view of this compromise, I had got my complaint No. 2135-Peshgi dated 26.10.2017 consigned to the record room but thereafter in the year 2019, above said Manoj Kumar had sold the said land measuring 1 Kanal 12.37 Marlas total 6674 Sq. Yds. to Mohan Chachlani son of Arjan Dev Chanchlani son of Seth Sidhu Mall Chanchlani resident of Bajri Company College road near Obroi Nursing Home, Pathankot and the land measuring 1 Kanal 6 Marlas has been sold through Neetu Bala to Akshay Mahajan son of Ashok Mahajan resident of Rampura Mohalla near Government Primary School, Dalhousie road, Pathankot. In this way, above said Manoj Kumar backed out from the terms and conditions of the said compromise and he did not return the amount to me in the year 2019 and he got registered case against me. On Inquiry from the office of Sub Registrar Pathankot, I came to know that the photographs, which were affixed by Renu Sharma wife of Manoj Kumar at the time of execution of sale deed, have been swapped later on by tampering with the record, under a deep conspiracy in connivance with the employees of the office of Sub Registrar namely Denial Masih, Parbodh Kumar and Smt. Parshotam Devi. I have also received report from the Sub Divisional Magistrate, Pathankot on 14.07.2020 regarding above said area and he has also mentioned in his report that this land was got transferred by Manoj Kumar above said by tampering with the record in AR SING connivance with Denial Masih, Parbodh Kumar and Smt. Parshotam Devi above said and exchanged the photographs. In this manner above mentioned Manoj Kumar and Renu Sharma wife of Manoj Kumar, under a deep conspiracy and in connivance with the employees of the office of Sub Registrar namely Denial Masih, Parbodh Kumar and Smt. Parshotam Devi, have tampered with the record of the office of Sub Registrar and fraudulently got the sale deed of the land in the name of myself and my wife, in their name and have further sold it and committed a big fraud



with me. Therefore, after registering the case as per law for usurping my land in wrong and illegal manner, strict legal action be taken against them and justice be provided to me.'

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioner submits that allegations against the petitioner are of scribing a sale deed which he has alleged to be impersonated and based on cheating/fraud for which almost 09 persons have been arrayed as accused and as far as allegations against the present petitioner are concerned he was not the beneficiary of the sale deed executed between the parties. Learned counsel for the petitioner further submits that co-accused namely Parbodh has already been granted the concession of regular bail by this Court vide order dated 09.09.2024 passed in CRM-M-42985-2024 (Annexure P-3).

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for almost 04 months 14 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail on the ground that the petitioner is a habitual offender as he is involved in another case.



4. Analysis

From the above case it can be culled out that challan stands presented on 29.06.2024 but charges are yet to be framed in the FIR which was registered on 15.10.2021; investigating agency has consumed almost 2 ½ years in completing the investigation wherein the essence of relevant material revolves around examination of the documents meaning thereby the evidence is by and large the form of document and on that account this Court does not find any reason to detain the petitioner behind the bars any further as nothing is to be recovered from him nor there is any danger of destroying the evidence since the material is in the possession of the prosecution now and part of the challan stands presented to Court.

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 Nimesh 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “**Baljinder Singh alias Rock vs. State of Punjab**” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions



in all probability would land the petitioner in a situation of denial of concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is hereby directed to be released on regular bail under Section 439 Cr.P.C. 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

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