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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46357-2024
Date of Decision: September 23, 2024

ANIL KUMAR DHIMAN ALIAS NEELU ....Petitioner(s)

VERSUS

STATE OF HARYANA ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saransh Sabharwal, Advocate and
Mr. Yavneet Dhakla, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

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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 grant of regular bail for the petitioner in FIR No.342 dated 24.04.2019, under Sections 406, 420 IPC and Sections 10, 24 of Emigration Act, registered at Police Station City Thanesar District, Krukshetra (Annexure P-1).

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

> *'To The Superintendent of Police, Kurukshetra, Legal action against the subject 1. Amit Khasa son of Ishwar Singh Khasa Mob. 8571092452, 2. Geeta wife of Amit Khasa Mob. 88378-18319, Ishwar Singh Khasa son unknown Mob. 85912-37755 4. Mother of Amit Khasa name not known wife of Ishwar Singh Khasa, all residents Flat No. 603,*

6th floor Society No 3 Sector 27 Panchkula Near Village Madanpur. 5. Ajay Kumar Monu son of Subhash Chand House No. 337B Saraswati Colony Yamuna Nagar Mobile No. 7988827435, 6. Anil Kumar Dhiman son of Moni Lal Dhiman Near Shiv Mandir Raipur Rani Panchkuja Mobile No. 855964280465 Uncle- in-law Ajay. 7. Sonia wife of Anil Kumar Dhiman Near Shiv Mandir Raipur Rani Panchkula Mobile No. 74949-36227 (Aunt-in-law Ajay), 8. Rakesh Kumar son of Shri Mam Chand resident of village Daulatpur District Yamuna Nagar Mobile No. 90505-80614 (Brother-in-law of Ajay) Sir, 1. That the applicant is living in a joint family in House No. 91 Chattha Colony, Near PNB Bank, Pipli Road, Kurukshetra and does farming on agricultural land in village Tangaur, Tehsil Shahbad, District Kurukshetra. 2. That the entire family of the applicant believes in worship and devotion and they visit the Shyam Lal Balaji temple in Purnagarh, Dr. Bappa Tehsil Radour, District Yamuna Nagar and consider him their Guru and all the accused also visit there, and used to attend satsang, therefore the applicant and the accused used to meet each other. 3. That the applicant met him in the temple Purnagarh itself and after the meeting accused no. 1 developed such intimacy with the applicant that he started visiting the applicant's home and after some time he started saying that how a hard working person like you is running a joint family here in India on the basis of agricultural land and 'said that people like you can earn good money by sending any member of your family abroad and accused no. I said that we have an institution registered by the Government of India for sending people abroad in which I and accused no. 2 to 4 all work as agents for sending people abroad and accused no. 5 to 8 help us in this work, if you have an idea of going abroad then at present there is a scheme for America work permit, you are my loved one, I want that any member of your family should go abroad and get permanent and in this way accused no. 1 instigated us in different ways to go abroad. Accused Nos. 1 to 4 started visiting our house and started instigating us and in this way the applicant fell under their influence and the applicant decided to send his younger brother Subhash abroad and as per the instructions of accused Nos. 1 and 2, in the month of July 2018, he gave his brother's passport, Aadhar card, driving licence, PAN card, bank statement, voter *card and coloured passport size photo and cash of Ra. 5 lakh to accused No. 1. 4. On 12.08.2018, accused No. 1 called and said that your brother's papers for America are ready. almost the paper work is complete and we have to deposit Rs. 3,00,000/- in the Embassy, which the applicant and his brother gave to accused No. 1. On 13.08.2018 he withdrew Rs. 2,94,000/- from his account and deposited Rs. 6,000 from home and gave Rs. 3 lakh in cash (entry is enclosed). 5. That on the same day, i.e., 13.08.2018, in the afternoon, accused No. I said that your ticket to America has arrived, so for the ticket, get a NEFT done in the account no. 911010031029560 of Manindra Ahluwalia, Mumbai, for which the applicant got Rs. 1,35,000/- NEFT done from his HDFC bank account no. 13681000007375 on the same day (receipt is enclosed). 6. That after the applicant got the NEFT done, accused No. 1. said that you should keep yourself ready tomorrow afternoon ie. on 14th August 2018 and then on the next day on 14th August 2018 accused No. 1 along with four people including accused Nos. 5,6,8 took the applicant's brother from Pipli Bus Stand to Delhi and from Delhi accused No. 1 took applicant's brother Subhash to Bombay and from there on 15th August 2018 accused No. 1 instead of taking applicant's brother to America took him to Tunisia (NORTH AFRICA) and told that the route to America is closed right now and therefore you will have to stay here for a few days and after a few days accused No.1 came back to Bombay on 03.09.2018 with the applicant's brother and after coming to Bombay again asked to deposit money in the account of Manindra Ahluwalia and after staying in Bombay till 05.09.2018 accused No.1 took the applicant's brother to Thailand on 06.09.2018 and after staying there till 09.09.2018 took him to BOREY ANGKOR GUEST HOUSE in PHEOPEN city of Cambodia and after staying there for two days accused No. 1 said that the route to America is still not open right now and showed the Italian red passport photos of other 4-5 persons and told that for going to America you need Italian Red passport and need a fresh ticket and more money is required. As per the instructions of the accused no.1, applicant's brother was having two ATM card. The brother of the applicant paid money from the ATM card from his HDFC bank account number 50100173241440 and from the account of his brother Sandeep Kumar SBI bank account* *number 30898119181. (entry has been attached herewith). 7. Thereafter accused no I told to the brother of the applicant, for new Italian Red Passport and for ticket, my man will meet you in Ethopia and showed a photo and said that I have a setting with the immigration officer and I am giving you the date and time to sit there and work with him (photo is enclosed), so you go to Ethiopia and I will sit here and ger your work done. After that the applicant's brother alone left for Ethiopia on 29.09.18 and reached Ethiopia on 30.09.2018 and on reaching there neither he meet anyone nor did anybody come with the new Italian red passport or with ticket. The applicant brother after setting stayed in a hotel. After getting fed up from the ordeal he has faced, applicant brother called the accused no.1, who told the applicant brother that you should drawn some money from ATM, so that if any problem arises you should manage it and in the meanwhile I am putting effort to send you America and you should arrange more money as required Showing the photograph attached with it he said that to go to America you will have to get a similar new Italian red passport and ticket, so you should pay more money and you should arrange Rs. 3,50,000/- in India, and accused no. 6,8 will take money from Pipli. On 10.10.18 from applicant Bhim Singh son of Gyan Chand resident of Tagor and accused no.6 and no.8 and Tekchand (driver) son of Ram Pal village Khairi, Raipurani, Panchkula, took money from complainant from the bus stand, Pipli and later the accused no. 6 took it to accused no. 1 in Cambodia. 8. That both accused nos. 1 and 6 now got together in Cambodia and together told the applicant's brother that when you want to go to America you will have to go via Tunisia and I will meet you there with a new Italian red passport and ticket, you reach there and wait for me, then both of us will go together to America from there, the applicant's brother left for Tunisia on 24.10.2018 and reached there on 25.10.2018 and stayed in a hotel there and when accused no. 1 was contacted, accused no. 1 said that your Italian red passport is ready and you are short of Rs. 1,00,000/- for the ticket, so you can send the money to accused no 2's Yes Bank account No. 06269180004681, the applicant's brother called the applicant to get Rs. 1,00,000/- NEFT done, the applicant got Rs. 1,00,000/- NEFT done from his nephew RESHAB SINGH HDFC account* *no. 50100231578175 on 12.11.2018 (receipt of which is enclosed). 9. The applicant's brother kept waiting for accused no. 1 in Tunisia city from 25.10.18 to 22.11.18 and now accused no. 1 stopped contacting and was not picked up. Then the applicant's brother, fed up, called the applicant and told him the entire story and asked him to book a return ticket to India, which the applicant booked for his brother and on 23.11.2018 the applicant's brother came to Delhi. 10. That when the applicant's brother came back to his home in India and along with applicant contacted all the accused in the month of December 2018, then they did not listen to anything, instead they started abusing the applicant and his brother and said that if you troubled us than we will get you both brothers and your family kidnapped and killed, no one will even know, and from there it came to light that all the accused together have done similar fraud with some other people also and complaints have been given against them in different police stations, which are pending, copy of the application is with the Superintendent of Police, Yamuna Nagar. Hence it is requested to you that keeping in view the above facts, all the accused no. 1 to 8 have conspired together, have embezzled and cheated the applicant and his brother to the tune of Rs. 18-20 lakhs, by showing false documents and luring them in the name of sending them to America. Therefore, strict legal action should be taken against above culprits and justice should be done. SD PARDUMAN SINGH Applicant Praduman Singh son of Shri Ram Lal resident of Tangaur Tehsil Shahbad, M District Kuruleshetra Mobile: 98121-06326.'*

3. **<u>Contentions</u>**

<u>On behalf of the petitioner</u>

The Ld. counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He submits that there is no documentary evidence whatsoever, of any transaction as alleged in the bank account of the present petitioner. It is further submitted that main accused, namely Amit Khasa who cheated the complainant heretofore has been granted the concession of bail. The Ld. counsel for the petitioner also submits that role of the present petitioner is at parity to the role of the co-accused namely Rakesh Kumar who has already been exonerated by the investigating agency. He further submits that there is no other case pending against the present petitioner and he is a person of clearn antecedents, meaning thereby he is not a habitual offender.

On behalf of the State

On the other hand, the Ld. State Counsel appearing on advance notice, accepts notice on behalf of the 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 02 months 07 days.

The Ld. State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail, but he is not in a position to controvert the submissions as made on behalf of the petitioner. He further informs the Court that in the present FIR challan stands presented on 09.08.2024; charges are yet to be framed.

4. **Analysis**

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 02 months 07 days and nothing is to be recovered from the present petitioner 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, the challan stands presented on 09.08.2024, the charges are yet to be framed and there are a total of 15 prosecution witnesses, none of whom has been examined yet, which is sufficient for this Court to infer that the conclusion of trial is likely to take a considerable amount of time and detaining the petitioner further 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

23.09.2024
Sangeeta

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