

2024:PHHC:142701



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-46594 of 2024 (O&M)
Date of Decision: 28.10.2024

(1) Jasbir Singh @ Jasbir Sindhu ...Petitioner
Versus
State of Haryana ... Respondent

CRM M-47061 of 2024 (O&M)

(2) Kulwant Singh ...Petitioner
Versus
State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Samay Singh Sandhawalia, Advocate
for the petitioner in CRM M-46594 of 2024.

Mr. Rajesh Nain, Advocate, for the petitioner
in CRM M-47061-2024.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose off two bail petitions, i.e., CRM M-46594-2024 titled as “Jasbir Singh @ Jasbir Sindhu Vs. State of Haryana” and CRM M-47061-2024 titled as “Kulwant Singh Vs. State of Haryana”, whereby, the petitioners have applied for grant of regular bail under Section 483 of the BNSS in case FIR No. 13 dated 27.05.2024 under Sections 120-B, 409, 420, 467, 468 and 471 of IPC

and Sections 13(2), 13(1)(a), 13(1)(b) of Prevention of Corruption Act, 1988 registered at Police Station ACB Ambala, District Ambala, Haryana.

2. Learned counsel appearing on behalf of Jasbir Singh @ Jasbir Sindhu (petitioner in CRM M-46594 of 2024) submits that the allegations have been levelled in the present case with regard to sanitation works and tied works, allegedly executed in the year 2021. However, the police has registered the FIR in the present case on 27.05.2024, i.e., after about 03 years, under political pressure. He further contends that the FIR has been got registered by the local MLA so that his favorable contractors may also get work during the process of bidding. Even, the payments were made to the contractors and labourers, only after the work got done and after checking work done, certificates were issued by the officials in the village itself. He further contends that even the Panchayat members after being satisfied with the work had given their affidavits and only then, the amounts were released by the petitioner. The petitioner was arrested in the present case on 28.05.2024 and is in custody for the last more than 05 months.

3. Further, learned counsel appearing on behalf of Kulwant Singh (petitioner in CRM M-47061-2024) also submits that Naveen Kumar, SDO, had transferred the amounts on the basis of the fake and forged muster roll. Still further, the petitioner had neither prepared

any false record nor made forgery therein nor hatched any conspiracy with other co-accused persons. Even, the payments were made after verifying and checking of the work done by the other officials. He further contends that whole case is politically motivated and the police has falsely involved the petitioner in the present case, just to save the senior officers of the department. Learned counsel further contends that the petitioner is in custody for the last 05 months and the challan has already been presented.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by the learned counsel for the petitioner on the ground that there are serious allegations against the petitioner and the petitioner is not entitled for the concession of regular bail.

5. I have heard learned counsel for the parties and perused the record.

6. It has been held by the Hon'ble Supreme Court in the matter of ***Sanjay Chandra Vs. CBI, 2011(4) R.C.R.(Criminal) 898 ; 2012 AIR (SC) (Cri) 47*** as under:-

“14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal

respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they

*have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Criminal Procedure Code confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual. This Court, in **Kalyan Chandra Sarkar v. Rajesh Ranjan, 2005(1) RCR (Criminal) 703 : 2005(1) Apex Criminal 307 : (2005)2 SCC 42**, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in*

accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorised by law. But even persons accused of non bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

7. The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in arbitrary manner. While granting the concession of bail, the Court has to consider whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence, nature and gravity of the charge, severity of the punishment, danger to the witnesses, character, behaviour and means, position and standing of the accused, reasonable apprehension of witnesses being tampered with and several other grounds. In the present case, both the petitioners have already suffered incarceration for a period of more than 05 months. The challan has already been presented against the named accused and the conclusion of the trial may take quite a long time.

8. In view of the above, without commenting any further on the merits, the present petitions are allowed and the petitioners are

ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

9. CRM 42850 of 2024 stands disposed off, accordingly.

28.10.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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