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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47533-2024 (O&M)
DECIDED ON: 27.09.2024

KULWANT SINGHPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Baljinder Singh Sra, Advocate
for the petitioner.

Mr. J.S.Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.29, dated 17.04.2024, under Sections 420 and 120-B of the Indian Penal Code, 1860, registered at Police Station Balianwali, District Bathinda.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Copy of application. Office of Senior Superintendent of Police Bathinda No. 67-Crime 24 dated 11.03.2024. To, The Senior Superintendent of Police Bathinda. Sub: Application for taking legal action against Jaspal Singh son of Gurnaib Singh resident Dikh (Mobile No. 9807600027) as well as his wife Preet Kaur wife of Jaspal Singh, Daya Singh son of Joginder Singh son of Kundan Singh and his wife Gurpreet Kaur wife of Daya Singh resident of Near Ghrat, Road, Village Mehraj, now resident of Village Malooka Mobile No.9815726438),

Harjinder Kaur daughter of Mukand Singh son of Hazura Singh now wife of Hardev Singh resident of Phul Tehsil Maur Mobile No. 9478774893, Kulwant Singh son of Malkit Singh son of Bhag Snigh resident of Phul Town, District Bathinda, Major Singh son of Karam Singh son of Chand Snighr resident of Village Mandi Kalan District Bathinda, Major Singh son of Karam Singh son of Chand Snigh resident of Mandi Kalan District Bathinda and Manga Singh Numberdar resident of Balianwali and Bharat Bhusha Advocate Balianwali have committed forgery and got registered false sale deed and therefore cheated an amount of Rs.1,26,00,000/-. Sir, I Lakhvir Singh son of Mahinder Singh son of Shivram Singh resident of Near Pirkhana, Mandi Road, Tehsil Maur District Bathinda. It is respectfully submitted; 1. That above said Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his wife Preet Kaur are my relatives. The above said persons have connived with Darshan Singh, Harjinder Kaur, Kulwant Singh, Major Snigh and Manga Singh Numberdar and have made a gang. They above said persons enticed me and Jaspal Singh and his wife Preet Kaur became dealers and got done the deal of land measuring 41 kanal 10 marla of Daya Singh @ Rs. 12,30,000/- per acre and total sale consideration comes to Rs.69,80,000/-. They have got an amount of Rs. 20,00,000/- from me i.e. Rs. 10 Lakh in cash and Rs. 10 Lakh through cheque on dated 17.12.2022 with regard to execute an agreement at Maur Mandi District Bathinda. At the above said time, Gurpreet Kaur wife of Daya Singh and above said persons Kulwant Singh and Major Singh etc. were also present at there. At that time, Jaspal Singh and his wife Preet Kaur and Dayal Singh and his wife Gurpreet Kaur told me about two persons who were describing themselves as Kulwant Singh and Major Singh and got us met at Maur Mandi and said that Daya Singh has entered into a deal of land measuring 41 kanal 10 marla with Kulwant Singh son of Major Singh. Jaspal Singh is the son of

aunt of my wife. Therefore, I had trust on them. Thereafter Jajspal Singh and Daya Singh again enticed us and on dated 19.01.2023, received more earnest money of Rs.5 Lakh at Maur Mandi. Above said Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his wife Preet Kaur had received more amount of Rs.25 Lakh on dated 29.04.2023 at the time of extension of agreement. In this regard; I had left all the work of writing on Jaspal Singh. He is my brother in law (Sala) in relationship and I had trust on him. On dated 29.04.2023, he did not rightly written the advance money in the writing with intention to cheat us. After that above said Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his wife Preet Kaur in connivance with other persons, with intention to commit cheating with us, shown us the land of some other person and therefore enticed us. Then Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his wife Preet Kaur said to my wife that they have another land for good profit. The estimate value of the land is Rs.62,20,000/- and land is measuring 41 kanals and they will also enter into deal of this land. They were my relatives, therefore, I was enticed by them. Then above said Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his wife Preet Kaur shown me a Jamabandi wherein khewat no. 1542 and the land was situated at Mandi Kaloan and the actual owners therein were Darshan Singh and Harjinder Kaur. They have got the same checked from Bharat Bhushan Advocate Balianwali. He said that the ownership is correct and there will be no problem in the registration of sale deed. After that Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his wife Preet Kaur, Harjinder Kaur, Kulwant Singh, Major Singh have received Rs. 53,20,000/- in cash from my wife on different occasions. The remaining amount of Rs.22,48,000/- has been given to Daya Singh, Kulwant Singh, Harjinder Karu, Jaspal Singh from my as well as the bank account of my wife. Then Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his

wife Preet Kaur said to me to come on dated 17.04.2023 in Sub Tehsil Balianwali and the sale deed will be registered on your name. I along with my wife Mandeep Kaur reached at Tehsil. They got scribed the sale deed from Bharat Bhushan Advocate. It was witnessed by Manga Singh resident of Balianwali and Jaspal Singh son of Naib Singh resident of Dikh. They said that sale deed will not be registered on that day for some reasons. We came back. After that on two occasions, they called for sale deed, but the sale deed was not registered. Then on dated 09.05.2023, accused Jaspal Singh, Preet Kaur, Daya Singh, Gurpreet Kaur, Kulwant Singh, Major Sing hand other accused Manga Singh Numberdar, Bharat Bhushan Advocate in connivance with each other prepared forged Jamabandi and got registered the sale deed No. 2023-24/67/1/167 dated 09.05.2023 from Darshan Singh and Harjinder Kaur in Sub Tehsil Balianwali. They have received entire amount of Rs.1,26,00,000/-from me in cash as well as through cheques. I had given them the copy of sale deed for sanction of mutation. The above said accused Daya Singh and his wife Gurpreet Kaur, Jaspal Singh and his wife Preet Kaur, Darshan Singh, Harjinder Kaur said to me that the mutation will be sanctioned in 15-20 days. Therefore they pretended me that the mutation will be sanctioned in few days. But mutation has not been sanctioned. Later on, I had talked with my relatives and they said that they will inform and then came to know that the sale deed which is registered by the persons, but the land is not on their names. Therefore Jamabandi has been fabricated and committed fraud. After that, I alongwith my wife and other relatives visited the land which was shown by the accused. The original owners of the land said that they hve not sold any land. After that accused Jaspal Singh son of Gurnaib Singh resident of Dikh and his wife Preet Karu wife of Jaspal Singh, Daya Singh son of Joginder Singh son of Kundan Singh and his wife Gurpreet Kaur wife of Dayal Snigh resident of Ghrat Road,

Village Mehraj now Maluka, Harjinder Kaur daughter of Mukand Snigh son of Hazura Singh now wife of Hardev Singh resident of PHul Tehsil Maur, Kulwant Singh son of Malkit Singh son of Bhag Singh resident of Phul Town, District Bathinda, Major Singh son of Karam Singh son of Chand Singh resident of Mandi Kalan District Bathinda and Manga Singh Lambardar resident of Balianwali have visited Bharat Bhushan Advocate Balianwali. They said that they had to cheat which they have done and from beginning their intention was to cheat. 2. The above said persons have taken benefit of our relatives and committed cheating. After that Jaspal Singh promised that the land is correct but has been mentioned wrong in the record. He will deliver the possession and got enter the mutation till 30.11.2023 and executed an agreement with us on dated 26.10.2023 and given us promise that if he fails to get register the sale deed of above said land till 30.11.2023, he along with other accused will return our amount of Rs.1,26,00,000/-. But the accused have not get register the sale deed and nor returned our amount of Rs. 1,26,00,000/-. 3. That now the above said persons have been contacted, they did not given any reliable reply. From which it is clear that the above said persons in connivance with other have committed fraud. Strict action be taken and justice be given. Our sale consideration and sale deed expenditures be returned from the accused. Thanking You. Sd. Applicant. Lakhvir Singh son of Mahinder Singh son of Shiv Ram resident of Near Pirkhana, Maur Mandi, Tehsil Maur District Bathinda.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that the dispute involved in the instant FIR is civil in nature but has given the colour of criminal liability. He further contends that the petitioner has neither cheated

the complainant and his wife nor he entered into an agreement to sell with the complainant or has signed any documents. It has been contended on behalf of the petitioner that he has no concern with the alleged fraud and has not entered into any deal of land with the complainant. He further asserts that co-accused of the petitioner, namely, Kulwant Singh has been granted the concession of regular bail by this Court vide order dated 18.09.2024 passed in CRM-M-45231-2024.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He seeks dismissal of the instant petition on the ground that the allegations against the petitioner and other co-accused person was of alluring and cheating the complaint to the tune of Rs.1.26 crore.

4. **Analysis**

Be that as it may, considering the custody period i.e. 03 months and 04 days for which the petitioner has suffered incarceration; it is a case of civil nature but has been given the colour of criminal liability; co-accused of the petitioner, namely, Kulwant Singh has been granted the concession of regular bail by this Court vide order dated 18.09.2024 passed in CRM-M-45231-2024; the petitioner was neither a beneficiary of the alleged transaction in addition to the fact that investigation is complete, challan stands presented to Court on 20.08.2024, charges are yet to be framed and out of total 19 prosecution witnesses, none has been examined so far, which is suffice for this Court to infer that the conclusion of trial will take a long time for which the petitioner cannot be detained behind the bars for an indefinite period.

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 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 discussions made herein-above, the petitioner is hereby directed to be released on regular bail 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 herein-above shall not be construed as an expression of opinion on the merits of the case.

27.09.2024

adhikari

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>