



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

226

CRM-M-48411-2024
DATE OF DECISION: 01.10.2024

VINAY KUMAR ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. D.K.Bhardwaj, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

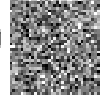
SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

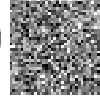
The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.109, dated 22.03.2024, under Sections 419, 420, 467, 468, 471, 120-B, IPC, 1860 registered at Police Station Chandimandir, Panchkula.

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

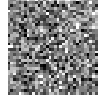
‘The copy article is as follows - Sir, it is requested that by the order of the Hon'ble Court Mr. Hitesh Garg ACIM Panchkula, a report was received in the police station to send the investigation report that Harvinder Singh's lawyer Amit Sharma has filed a complaint in the court that some person has got the bail of the accused from the Hon'ble Court in the case State of Haryana vs Raees Khan Ors by using fake Aadhaar card and property details of Harvinder Singh son of Dalbara Singh, resident of village Bathlana, police station Sohana, district



Mohali Punjab. The investigation of which was carried out by PSI Ajay Kumar, Police Post Ramgarh. During the investigation, complainant Harvinder Singh son of Dalbara Singh resident of village Bathlana police station Sohana district Mohali Punjab, accused Danish son Zulfan resident of Kansapur district Yamunanagar and Gurkamal the accused Danish son of Zulfan, resident of village Kasanpur police station city Yumnanagar district Panchkula was arrested in FIR No. 67 dated 14.03.2024 Section 323, 365, 506, 120-B IPC, police station Chandimandir and was produced in the Hon'ble court on 15.02.2024. At the time of bail of the accused, someone appeared in the Hon'ble Court in the guise of a fake Harvinder Singh, who gave the Jamabandi of the above-mentioned land of Harvinder Singh as surety for the year 2019-2020 Khewat no. 109. Khatoni No. 125, area 3 marla, price 3 lakh and fake Aadhaar card presented in the Hon'ble court. An investigation was conducted regarding the documents and it was found that Harvinder Singh's original Aadhaar card number is 2563- 1524-3211, whereas fake Harvinder Singh has issued Aadhar card no. 9246-9369-2168 has been prepared and presented in the Hon'ble Court and in the property details given in the Hon'ble Court by the fake surety, an attestation report dated 05.02.2024 has been written on behalf of Jagseer Singh Patwari and signed with the seal of Sub Registrar Mohali. But on 05.02.2024, the local Patwari of this village is Gurkamal Singh and Gurkamal Singh has revealed that someone has given bail to a person named Danish by posing as fake Harvinder Singh and by forging the seal and signature of the Patwari and Tehsildar. Accused Danish disclosed in his staternent that surety Harvinder Singh had got him presented in the Hon'ble court by Gurmukh. From the (accused), Sultan (identified), Gurmukh and unknown fake Harvinder Singh etc. have committed this cognizable crime in the Hon'ble Court by fraudulently preparing fake documents as part of a criminal conspiracy. Their action comes under



criminal sections 419, 420, 467, 468, 471, 120-B of the Indian Penal Code. The investigation report in this regard was sent to the Hon'ble court on 18.03.2024 for further orders. Today an order of the Hon'ble court Shri Hitesh Garg C) (SD)RC/ACJM/PKL dated 18.03.2024 has been received through Parokar in the police station which is as follows: - State Vs Raees Khan Ors Present: Sh. Akashdeep Singh, APP for the State Sh. Amit Sharma, Advocate for applicant Harvinder Singh. In compliance of the order dated 05.03.2024, report has been filed by concerned SHO after due inquiry. Same has been perused. In nutshell, it has been submitted in the report that from the preliminary inquiry, it was revealed that at the time of furnishing bail bonds of accused Danish, some person impersonated himself as Harvinder Singh i.e., the applicant and submitted the jamabandi pertaining to the land owned by Harvinder Singh and fake Aadhar Card. Upon verification, Aadhar card of the original Harvinder Singh was found different from the number of the fake Aadhar card submitted in the Court. Not only this, it has been submitted that the fake Harvinder Singh also put the fake stamp and signatures of Patwari and Tehsildar. In the preliminary inquiry, it was unknown person who stood as Harvinder Singh entered into a criminal conspiracy to commit cheating and prepared forged documents and committed cognizable offenses under Sections 419, 420, 467, 468, 471 and 120-B IPC. The aforementioned report submitted by the police affirms the assertion made by the applicant in his application. Considering the facts that have come on record regarding furnishing of fake surety and documents, bail of accused Danish is hereby cancelled. His bail bonds and surety bond stand forfeited. Concerned SHO is directed to register FIR in the present matter as per the preliminary inquiry report submitted today in the Court and file the compliance report within a week positively. Arrest warrants against accused Danish be now issued for 08.04.2024. Copy of



this order be also forwarded to concerned Tehsildar to remove the noting i.e. endorsement with respect to the land of Harvinder Singh s/o Dalwar Singh. Compliance report from the Tehsildar is also awaited for the date fixed. Sd/-HITESH GARG CJ (SD).'

3. **Contentions**

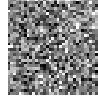
On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case and no recovery has been effected from the petitioner. As per the allegations levelled against the present petitioner, he in order to get release an accused has furnished fake/forged surety bonds etc. He submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time as out of total 9 Prosecution Witnesses, none has been examined so far and also the antecedents of the petitioner are clean.

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 5 months and 10 days.

Learned State Counsel on instructions from ASI Parveen Kumar opposes the prayer for grant of regular on the ground that the petitioner is involved many other cases bail but is not in a position to controvert the submissions made by counsel for the petitioner. He informs the Court that in the present FIR challan stands presented on 14.06.2024 and charges are yet to be framed.

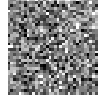


4. Analysis

From the above case it can be culled out that the petitioner has already suffered sufficient period in custody i.e. 5 months and 10 days, antecedents of the petitioner are clean, meaning thereby he is not a habitual offender, 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 stands presented on 14.06.2024 and charges are yet to be framed, out of 9 prosecution witnesses, none has been examined so far 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 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

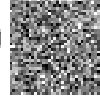


lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

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 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 aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

01.10.2024
anuradha

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