

2024:PHHC:139957



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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-51729-2024

DECIDED ON: 24.10.2024

HIMANSHU @ HEMANT @ JANGLI

....PETITIONER

VERSUS

STATE OF HARYANA

RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Pradeep Virk, Advocate and
Mr. Kamal Deep Sehra, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl. A.G., Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 439 Cr.P.C., read with Section 437(6) of Cr.P.C., has been invoked for grant of regular bail to the petitioner in case FIR No. 422, dated 10.07.2023, under Sections 419, 420, 467, 468, 471, 120-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station City Ballabgarh, District Faridabad, Haryana.

“To, the SHO Sahib, Police Station City Ballabgarh, Jai Hind, Today, I ASI alongwith HC Ashid 3253, Constable

Surender 728, Constable Rahul 795 for investigation of FIR No. 745 Dated 07.12.2020 under Section 148,149,216,323, 341, 307 IPC and 25-54-59 A. ACT, Police Station City Ballabgarh were Present at Natthu Colony for investigation that on dated 6.07.2023 the wanted accused namely Himanshu alias Jangli and Manoj alias Billa sons of Chandra Prakash Sharma resident of H. No 50, Natthu Colony, Ballabgarh were arrested in the present case and at the time of arrest of accused Himanshu alias Jungli the recovery of incriminating documents in his possession one Aadhaar card of Shaurya Veer son of Chandra Bhan resident of H. No. 1038/1, Krishna Colony, Gurugram bearing no. 297028575992 in which the date of birth is written as 08.10.1978 and a passport in the name of Shaurya Veer whose NO. R6387111 valid from 18.01.2018 to 17.01.2027, issued from Regional Passport Office, Delhi bearing photograph of Himanshu and an ICICI BANK Passbook A/C NO. 106901518281 and a pen card whose NO. BMGPV6884A and a HDFC BANK BUSINESS MONEYBACK VISA card whose NO. 4577044311322633 VALID FROM 01/23 VALID THRU 01/28 and in the possession of accused Manoj alias Billa an Indian Driving License bearing NO. 4760/B/2000, which was of Manoj Sharma son of Chandra Prakash resident of H.No. 29, Natthu Colony, Ballabgarh was issued from the Authority valid from 31.08.2007 to 30.08.2027 and an Aadhaar Card of Ranvijay son of Chandra Bhan H.No. 1038/1, Krishna Colony, Gurugram bearing NO. 703175618751 in which the date of birth is 19.07.1979 and a passport of Ranvijay on which the photo of Manoj was affixed whose NO. N8110774 valid from 06.05.2016 to 05.05.2026 issued by Regional Passport Office, Delhi and an ICICI BANK MASTERCARD CARD NO. 5344241069006736 VALID FROM 12/19 VALID THRU 11/24 and an ICICI BANK MAKE MY TRIP VISA SIGNATURE CARD whose NO. 4073520145802014 VALID THRU 01/30

AND AN ICICI BANK DEBIT VISA CARD whose NO. 4838341069016648 VALID FROM 02/21 VALID THRU 01/28 and a HDCF BANK BUSINESS REGALIA VISA SIGNATURE whose NO. 4572621501640620 VALID FROM 01/23 VALID THRU 12/25 and an AXIS BANK CLUB VISTARA VISA INFINITE CARD whose NO.4308340000692963 VALID THRU 03/26 were recovered and taken into police custody and the documents were verified from the family of the accused at the house of the accused at Nattu Colony in the present case and the school certificate of the accused in which Manoj Sharma's certificate of 102 in which Roll no. 066935 bearing date of birth is 10.07.1989 and father's name is Chandra Prakash and the certificate issued by Haryana Board in November 2006 and Manoj Sharma's certificate of BA Final 2013 issued by Manav Bharati University in which registration no. MBU1010-39636 and Himanshu Sharma's mark sheet of 102 in which Roll no. 10596 bearing date of birth is 08.10.1988 which was issued by Mohali Board in the year 2009 and BA certificate of Siddharth University Pilani Rajasthan in which enrolment no. J10BAGEN00007307 and serial no. 35199812 and Serial No. 16090665 of May 2011 were obtained and verified secretly as per the rules were which used by the accused to cheat the public by changing their identity and using fake name and address to cheat the public after committing heinous crimes, using fake Aadhaar card, pen Card, passports and other documents by preparing, it has been found to travel abroad by deceiving government and non-government organizations and using them continuously. That as per the record of Passport, the accused has visit Bankok, Dubai, Baali (Indonesia), Singapur and Mlesiya. The accused have been declared as Proclaimed Offenders by the Faridabad Courts after committing the heinous crimes, the accused could not be arrested due to the fact that the accused has changed their identity and made fake

documents to deceive the public. A reward of fifty thousand rupees has been announced for those who have been declared proclaimed offender by the Faridabad court due to fake identity cards, Aadhaar cards and passports, evading the arrest, the accused have been found guilty of the crime under Sections 419, 420, 467, 468, 471, 120B IPC by the documents recovered from the accused and the verification of the documents.”

3. Contentions

On behalf of the petitioner:

Learned counsel for the petitioner submits that the allegation qua the petitioner is that he was found in possession of forged Aadhar Card, passport etc., and has concealed his identity. He further submits that petitioner is in custody since 11.07.2023 and nothing is to be recovered from his possession. He relies upon the order dated 12.08.2024 (Annexure P-2) passed by a co-ordinate Bench of this Court in CRM-M-25981-2024, whereby the co-accused Manoj @ Brahamdutt Sharma @ Manoj Sharma has been granted the concession of regular bail.

On behalf of respondent-State

Learned State counsel has filed the custody certificate, which is taken on record. He prays for dismissal of the present petition on the ground that the petitioner was found in possession of fake documents, which were obtained by him to conceal his identity and evade his arrest other multiple cases, meaning thereby he is a habitual offender.

4. Analysis & Conclusion

Be that as it may, considering the fact that in the present case, the petitioner has already suffered incarceration for a period of 1 year, 3 months and 13 days, wherein investigation stands completed, charges have

been framed on 23.11.2023 and out of total 16 prosecution witnesses, only two have been examined so far, meaning thereby, the conclusion of trial shall take considerable time, this Court is of the view that no useful purpose would be served by keeping the petitioner behind bars for an indefinite period, which would curtail his right for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr. 2018(2) R.C.R. (Criminal) 131***. 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 as 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.

As far as the contention of the learned State counsel with regard to the pendency of other case is concerned, reliance can also 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 lend the petitioner in a situation of denial the concession of bail.

In view of the discussions made hereinabove, 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 hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

24.10.2024
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- 1. Whether speaking/ reasoned : Yes / No
- 2. Whether reportable : Yes / No