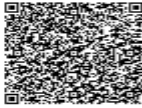


2024:PHHC:138925



218

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51185-2024
DECIDED ON: 23.10.2024

KAMALJIT SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Navjot Kaur, Advocate for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS, 2023, has been invoked for the grant of regular bail to the petitioner in FIR No. 81, dated 09.07.2024, under Sections 420, 120-B of IPC and Section 13 of Punjab Travel Professional Regulation Act, 2012, registered at Police Station Division No.4, Patiala, District Patiala (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

One complaint No. 1658/0P71/ FR Dated 08.04.2024 on behalf of Hardeep Singh son of Balli Singh resident of Village Nansu, Tehsil and Distt. Patiala. To the respected SSP Sahib, Patiala. For registering the case under Section 420/120 of IPC against Kamaljit Singh son of

Shingara Singh R/o VPO Sheikhpura, Tehsil and Distt. Kapurthala, Sultan Khan son of Sabar Khan R/o Village Nansu, Tehsil and Distt. Patiala, Avtar Kumar son of Resham Chand resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, Sahib Singh son of Dev Ram resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, Munish Kumar agent Distt. Jalandhar received through registered post whose subject is as under: - To the SSP Sahib, Patiala complaint against 1. Kamaljit Singh son of Shingara Singh R/o VPO Sheikhpura, Tehsil and Distt. Kapurthala, (Mob. No. 89688-32063) 2. Palwinder Kaur wife of Kamaljit Singh R/o VPO Sheikhpura, Tehsil and Distt. Kapurthala, (Mob. No. 89688-32063), 3. Munish Kumar agent, Distt. Jalandhar (Mob. No. 89687-47541), 4. Sultan Khan son of Sabar Khan (Mob. No. 98780-81829), 5. Avtar Singh son of Resham Chand resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, (Mob. No. 78145-35654) Agent, 6. Sahib Singh son of Dev Ram resident of Village Baran, Tehsil Phagwara, Distt. Kapurthala, (Mob. No. 98156- 06731) for grabbing the amount of Rs. 12 Lacs for sending Australia on Tourist Visa. Sir, it is submitted that I, Hardeep Singh son of Balli Singh is the resident of Village Nansu, Tehsil and Distt. Patiala and submits as under:- 1. That I am resident of above mentioned address. I am peace loving and law abiding citizen and is working as an agriculturist. 2. That I want to inform you through this complaint that the person mentioned at Sr. No.4 in the subject introduced me to person No. 5, 6 for sending me to Australia. 3. That it is worth mentioning here that the persons No. 5 and 6 mentioned in the above said subject got introduced me persons No.1 and 2 and the person No. and 2 mentioned in the above said subject got executed an agreement with me for arranging the Tourist Visa in sum of Rs. 12 Lacs in writing on 09.08.2022 at Jalandhar which was duly notarized. 4. It is submitted here that on 09.08.2022 I gave Rs. 5 Lacs in cash at Jalandhar and the Pronote was executed as a proof and Rs. 1 Lac and Rs. 60, 000/- was transferred in the account of person No.2 of Punjab National Bank bearing NO • 3131000102057825 and the person No.2 issued two cheques bearing

No. 486327 and 486328 of Punjab National Bank Branch Sheikhpura, Distt. Kapurthala as a security. 5. It is submitted that the above said person mentioned in the subject sent me to Thailand and on 14.08.2022 I gave Rs. 1,50, 000/- which comes to 1800 Dollar in Australia Currency. 6. That I presented the cheque in State Bank of India at Patiala and the same has been dishonoured. 7. That I made so many calls to the above mentioned persons in the subject for returning my money but which was taken for arranging the Tourist Visa but the above mentioned persons did not reply me and the above mentioned”.

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner has drawn attention of this Court to the statement of account dated 23..09.2024 attached at Annexure P-2 to assert that no such entry of Rs.1,60,000/- in the joint account of petitioner and his wife on 09.08.2022 is apparent and, therefore, the story of prosecution is belied.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. According to the custody certificate, the petitioner has suffered incarceration of 2 months and 27 days.

4. Analysis

Be that as it may, considering the fact that the alleged amount i.e., Rs. 1,60,000/- was not transferred in the account of the petitioner on 09.08.2022, wherein he has suffered incarceration of 2 months and 27 days and not involved in the other case, as is evident from the perusal of the custody certificate, investigation is complete, challan stands presented to the Court and charges are yet to be framed meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner 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 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 hereinabove, the petitioner is hereby directed to be released on regular bail on 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.

23.10.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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