

2024:PHHC:139586



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51536-2024
DECIDED ON: 24.10.2024

VINOD

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl. AG, Haryana.

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. 295, dated 27.07.2023, under Sections 408, 420 of IPC (now Sections 316(4), 318(4) of BNSS Act) and Section 66D of IT Act, registered at Police Station Kherki Daula, District Gurugram.

2. Facts

Facts as narrated in the FIR reads as under:-

To, The DCP, Manesar, Gurgaon, Haryana. Subject:- Regarding embezzlement committed by an employees of Firm M/s Sita Services. Sir, It is requested that I am writing this letter on behalf of my firm M/s Sita Services, GSTIN-06AIEPK1325J12]. We are authorized fuel retailers. The firm has got license from indian Oil, which is a public

sector unit and were situated near N.H. 8, Kherki Daula Toll Plaza, Gurugram 122001. During the period of May 2023, we came to know about the fraud committed by our employee Vinod. The particulars of the accused are; Name: Vinod, Date of Birth: 71 September 1990, Pan No. AMWPV3378G, Achar No. 4549-7319-5095, 99915-67729, Address: C/Q Jagdish, VPO Talwandi Rana, 65 Hisar, Haryana-125001. Email ID. aroravinod749@gmail.com. Mobile No. 7087083049. The modus operandi of committing fraud is that; 1. The firm has ICICI Bank account No. 002105501900 and IFSC Code is ICIC0000021. Because of his role as well as responsibilities in the firm, he was having access of our net banking credentials as well as had reach upto our mobile device where the OTP received for transactions. 3. That during the above said period, the above said employee has transferred an amount of Rs.78,45,921/- from the ICICI Bank account of the above said firm without any authority. 4. Then he gave remarks "IDFC Banie" with Intention to show the sume as inter banking transaction in the other account, 5. That recently, while we were matching the bank balance and we came to know that neither this amount has been deposited in our IDFC bank account and nor the same has been received in the account. It has been done by the accountant or owner to save from any possible doubt. 6. That when we further enquired from the concerned branches of the bank, we came to know that the accused has transferred the amount in his personal bank account vide ICICI Bank account number. No.242901504033 and IFSC Code 0003875. 7. That we are capable to know each and every transactions made from the bank account of our firm to his personal bank account. 8. As and when the amount is deposited in his personal bank account, the same then transferred to the different bank accounts or persons. We do not know about the same. Annexure-A contains the details of transaction made from our ICICI bank account in the bank account of the accused. Annexure-B contain the details of bank statement of accused, from which . the entries can be ascertained as well as regarding the further activities. Annexure-C is the aadhar card of accused Vinod Arora, Pan Card as well as the salazy slip, the

accused last time had appeared in the office on 14th July 2023. Then he had departed for some official work at 15:00 PM. Since then his whereabouts are not known. We are not aware about his address. Therefore, it is requested that we need your assistance in the matter. 1. FIR be registered under the appropriate sections for the offence committed. 2. To kindly provide assistance for keeping an eye on the transaction of amount as well as high volume transactions through bank channels. 3. To give information to Income Tax Department, so that for any verification of regarding any monetary transaction, so that the information can be given regarding his identity documents with regard to monetary transaction. 4. To kindly give information to the aviation department as well as foreign ministry, so that he may not fly abroad. Sd. Ashwani Kumar. Mobile No.9999014448, 9212405241. Police Action: Upon receipt of above said complaint by post in the Police Station, complaint no. 13227061231069 dated 27.07.2023 has been lodged. From the enquiry in the application, offence under section 408/420 of IPC has been found committed. Therefore FIR No. 295 dated 27.07.2023 has been registered under section 408/420 of IPC in Police Station Kheri Daula District Gurugram.

3. Contentions:

On behalf of the petitioner

Learned counsel for the petitioner submits that the story of the prosecution is based on false and baseless ground without any concrete evidence. He further submits that petitioner has suffered incarceration of 9 months and 29 days, wherein investigation is complete and complainant stands examined.

On behalf of the State

Learned State counsel has filed the custody certificate of the petitioner, which is taken on record. He prays for dismissal of the present petition on the ground that petitioner is a habitual offender, as he is involved in one other case, therefore, does not deserve the concession of bail at least at this stage.

4. **Analysis**

This Court is sanguine of the fact that the gravity of offence, if looked into i.e., Section 408 and 420 of IPC, the petitioner has already suffered incarceration of 9 months and 22 days, wherein investigation is complete, charges stands framed and out of total 14 prosecution witnesses only 2 have been examined so far, 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.

As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can 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.

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.

(SANDEEP MOUDGIL)
JUDGE

24.10.2024

Meenu

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