

2024:PHHC:145340



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

Sr. No.297

**CRM-M-54808-2024(O&M)
Date of decision : 07.11.2024**

Sukhwinder Kumar

..... Petitioner

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Nikhil Ghai, Advocate, for the petitioner.

Mr. M.S. Longia, Addl. AG Punjab and
Mr. R.S. Thind, DAG, Punjab.

Ms. Arrti Kaur, Advocate, for respondent No.2.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 of BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.230 dated 17.10.2023, under Sections 406, 420 & 120-B IPC, registered at Police Station Sadar Kharar, District SAS Nagar, Mohali.

2. The relevant part of the FIR is reproduced below:-

*'To, Senior Superintendent of Police (SSP) SAS NAGAR,
SUBJECT:- Illegally seized money by Mr. Jarnail Singh Bajwa
MD M/s. Bajwa Developers Ltd. SIR, It is my humble request
that Mr. Jarnail Singh Bajwa MD M/s. Bajwa Developers Ltd,
Sunny Enclave Kharar, took an advance of Rs. 5,00,000/- in
2012 from me as booking amount for a 2 BHK Flat in their
upcoming Residential 74/117, SAS Nagar. Project (Copy in of
Sector receipt attached). After that I did not receive any
information about the progress in the booking process nor was*

2024:PHHC:145340



I informed about the places where my money was used. I visited their office a quite lot of times, expecting them to return the amount but in vain. Numerous efforts from my side were made to meet Mr. Bajwa but their staff refused to let me in. The money I gave him, thinking that I am investing in a legal property was the money I earned with consistent hard work in my field of work. So, I would be grateful if you take this matter into consideration and help me reclaim my illegally seized money. Thanking you, Yours faithfully, Sd/- Rajinder Singh Saini, R/o House No. HE 150A, Phase-9, Mohali, Contact No. 9815726191." Thereafter the enquiry into above said complaint was conducted by Sh. Harinder Singh Mann, P.P.S., Superintendent of Police (Traffic) District S.A.S. Nagar, Narinder Chaudhary P.P.S, Deputy Superintendent of Police (Special), District S.A.S. Nagar, Insp. Sunil Kumar No. 4/J.R.T) Incharge Anti Human Trafficking Unit District S.A.S. Nagar, who gave conclusion report in their enquiry report No. 190/5C/Superintendent of Police, Traffic and Ind. Security, dated 11.10.2023 as under:- "From the perusal of statements and documents produced during enquiry of Special Investigation Team, it has been found that in year 2012, complainant Rajinder Singh Saini talked by going to office of Bajwa Developers for purchasing one 2BHK flat from M/s. Bajwa Developers Pvt. Ltd. Respondent company had told the total price of one 2BHK flat in Sector 74/117 at Rs. 25 lacs. Thereafter complainant paid Rs. 05 lacs to Bajwa Developers i.e Rs. 2,00,000/- vide cheque No. 411165 drawn on H.D.F.C Bank, Rs. 1,50,000/- vide cheque No. 790330 drawn on ICICI Bank and Rs. 1,50,000/- vide cheque No. 849795 and Bajwa Developers receipt to him on 12.04.2012. issued Bajwa Developers have not given flat till date. After taking money regarding giving flat to complainant and issuing receipt of the money, neither they have giv given flat, nor have returned the

2024:PHHC:145340



money. As per complainant, Jarnail Singh Bajwa, Director Bajwa Developers Pvt. Ltd., Sunny Enclave and his partner Baldev Singh Bajwa, Director, Bajwa Developers Pvt. Ltd., Sukhwinder Singh, Director, Bajwa Developers Pvt. Ltd., and their P.A Bhupinder Singh (95016-90039) have been making pretexts by promising to give flat. It is pertinent to mention here that Jarnail Singh Bajwa, owner of Bajwa Developers has sold plots to a number of people in his project but people are not getting possession of the plots despite making payment of amounts, who have committed cheating with a large number of people on the pretext of selling plots. this regard, a In number of complaints have been received for enquiry and many cases have been registered against Jarnail Singh Bajwa, owner of Bajwa Developers regarding committing such type of cheating. No partner and competent officer has been coming present in this office for getting recorded the statement and producing the record on behalf of company. If approved, circumstances, it is in above said recommended to sections 406, 420, register case FIR under 120-B, IPC against Jarnail Singh Bajwa, owner of Bajwa Developers Pvt. Ltd., Kharar, office address Sunny Enclave, Desumajra Tehsil Kharar, District S.A.S. Nagar and partner accomplices Baldev Singh Bajwa, Sukhwinder Singh and Bhupinder Singh P.A (95016-90039) in Police Station Sadar Kharar, District S.A.S. Nagar for committing cheating with complainant investigation”

3. Learned counsel for the petitioner *inter alia* submits the petitioner has been falsely implicated in this case. He further submits that the alleged occurrence is of the year 2012 and the FIR has been registered after a delay of almost 11 years. He refer to Annexure P2 and also submits that the matter has been compromised between both the parties and amount

2024:PHHC:145340



of Rs.10,00,000/- has been paid to the complainant. The petitioner has undergone an actual custody of 02 months.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the petitioner was actively involved in the commission of the offence. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 02 months and is involved in 07 other criminal cases. He however, submits that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Learned counsel for respondent No.2 admits the factum of compromise between both the parties and has not disputed the fact that amount of Rs.10,00,000/- has been paid by the petitioner.

6. Heard the rival submissions made by learned counsel for the parties.

7. Admittedly, the petitioner has undergone an actual custody of 02 months and the matter has been compromised between both the parties

8. It would be unjust to keep him behind bars looking at the condition of the jails which are not conducive for rehabilitation process and detaining the accused persons in jails would also tantamounts to violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”**.

2024:PHHC:145340



9. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382** in which, it is held that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced herein-below:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

10. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

11. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. The conclusion of the trial will take a considerable time. Therefore, this Court is of the view that further incarceration of the petitioner will not serve any purpose.

2024:PHHC:145340



12. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

13. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

14. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

07.11.2024

Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No