IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-56449-2024
DATE OF DECISION: 03.12.2024

PAWAN KUMAR ...PETITIONER

Versus

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pawan Attri, Advocate for the petitioner(s).
Mr. Chetan Sharma, DAG, Haryana.

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SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 439 Cr.P.C read with section 483 B.N.S.S. for grant of regular bail to the petitioner in case FIR No.09 dated 04.01.2024 U/s 201, 406, 420, 467, 468, 471 IPC and section 24 Immigration Act, P.S. Assandh, District Karnal.

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

> '*To, the SHO, Police Station, Assandh. Subject: Application against 1. Pawan Kumar Mobile 9991113625, 9992732003, no. 999129320 S/o Dharam 'Singh, 2. Dharam Singh who is the father of Pawan residents of Village Gitapur (Gitalpur), Tehsil Nigdu, District Karnal for committing cheating of Rs. 10,80,000/- on the pretext of sending abroad, defrauding and extending death threats. Sir, the applicant submits as follows: applicant Manoj 1. That the Kumar S/o Jagdish Singh R/o Village Rahra, Tehsil Assandh, District Karnal and is a peace loving, law abiding citizen. 2. That I previously had a coaching centre at Assandh, District Karnal and the abovementioned accused came to my centre and we met there only at Assandı Centre and the abovementioned accused said that he is doing the work of immigration and that if any of your relative*

or you want to send anyone to abroad, I can send him and securing a job for him abroad will also be mine responsibility and I got allured into his words and I trusted his words and I talked to him about my brother-in-law Abhishek R/o Village Inchora, U.P. for sending him to Australia to which he demanded Rs. 20 lakhs from me an said that firstly you have to give me Rs. 10 lakhs i.e. the half amount in advance thereafter when your brother-in-law will reach Australia, then I will take the remaining Rs. 10 lakhs. That I discussed regarding this with my brother-in-law and his family and his family members also agreed and thereafter, accused Pawan called his father Dharam Singh to Assandh and handed over the passport and other documents of my brother-in-law to him at Assandh, District Karnal. And thereafter, the abovementioned accused Pawan said that I am pursuing his file and that you keep Rs. 11,80,000/- ready and after few days, the abovementioned accused made a phone call to me and asked whether the money is ready to which I said that I am arranging the money. Rs. 2,00,000/- on dated 26.05.2023 was withdrawn by self and gave it to the accused persons and thereafter on 01.06.2023, I did the RTGS of Rs. 2,80,000/- from my account to the account of Pawan. Thereafter, he again called me to his village Gitapur (Gitalpur) and then I called my brother-in-law (jija) and I along with my jija went to the house of the accused with Rs. 7 lakhs to which the accused persons gave us the tickets and Visa and took Rs. 7 lakhs from us. This is how, after taking Rs. 11,80,000/- from us, the accused persons told us that I will take Abhishek on 02.06.2023 to Delhi Airport and will send him from there. 4. That thereafter, when I got this ticket checked, there was no date on it after which I made a phone call to the abovementioned accused person that there is no date on this ticket to which he said that you keep the ticket with yourself, this ticket has been cancelled, I will give you another ticket, thereafter he gave the ticket to us on 09.06.2023 and told us to be ready. I got prepared my brother-in-law Abhishek and on 08.06.2023, we made a phone call to the abovementioned accused that at what time we have to depart to which the abovementioned accused told us to meet him at Delhi Airport, he *will reach there only. That on 09.06.2023, I along with my brother-in-law, Abhishek reached the Delhi Airport and kept on waiting for the abovementioned accused but he did not reach there, when I made the phone call to the abovementioned accused, his phone was found to be switched off and we came back to home after waiting there for the entire day. 5. That the next day on 06.06.2023, I along with my jija went to meet the abovementioned accused at his house but the abovementioned accused was not found there, we found his father Dharam Singh there and we told everything to him to which he said that you do not have to worry, if you have been defrauded then I will take the responsibility of your money, whenever he comes, I will talk to him and will call you and we came back from there but even after 3-4 days, neither they made the phone call nor picked up our call and after waiting again on 10.06.2023 I and my jija went to Gitapur (Gitalpur) where we found the abovementioned accused Pawan Kumar and his father on the spot and we talked there to which the abovementioned accused Pawan Kumar started threatening us and we had an argument there to which the accused Pawan Kumar transferred Rs. 1 lakh from the account of his wife Anita Devi to my account and said that I will return the remaining amount of Rs. 10,80,000/- within 2-3 days thereafter, when I and my jija went to the house of the accused after days, accused was found present at his house from whom we demanded our money to which the accused Pawan Kumar and his father threatened us that if you come again here, then I will level allegations of harassing and molesting my wife and will register a false case of theft against you. 6. That the abovementioned accused has defrauded us and has grabbed Rs. 10,80,000/- from us and threatens us that you can go wherever you want, I am not afraid of anyone and that police only needs money and if I give Rs. 2 lakhs to police out of this, then police can do me no harm and also threatened me that till the time police comes to me, I would have gone to abroad thereafter nothing will happen to me. Thereafter, the applicant moved an application against the abovementioned accused persons on 10.08.2023 at P.S. Assandh. Then on 08.09.2023, the accused gave an affidavit that I will give* *your remaining amount of Rs. 10,80,000/- till 28.09.2023 and also said that if I could not return your remaining amount till 28.09.2023, I will give Rs. 10,80,000/- along with interest. And after 28.09.2023, when I contacted the accused persons, accused the kept on giving false assurances to me and kept on lingering on. That even till date, Rs.10,80,000/- of mine have not been returned. Therefore, it is requested to you that strict legal action may be taken against the abovementioned accused persons for committing cheating of Rs. 10,80,000/- by defrauding us and extending death threats and threatening to implicate in a false case and my money may be get returned. I shall be highly obliged. Thanking Yours. Dated: 14.12.2023 Sd/ Manoj Kumar.'*

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 there is no proof of the alleged payment made to the petitioner, moreso, the allegations levelled in the FIR are mere bald averments made against the present petitioner in order to implicate him in false case. He submits that no recovery is to be effected from the petitioner, hence, no useful purpose would be served to keep the petitioner behind the bars.

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 10 months and 25 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner has committed fraud against the complainant but is not in a position to controvert the submissions made by learned counsel for the petitioner.

4. **Analysis**

Be that as it may, from the above discussion, it can be culled out that the petitioner has already suffered sufficient incarceration i.e. 10 months and 25 days, no recovery is to be effected from him and except bald statement there is no evidence to connect the petitioner with the alleged offence, 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 05.03.2024 charges stands framed on 06.06.2024 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 considerable time and therefore, 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

03.12.2024
anuradha

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*