

2024:PHHC:161100



241 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CRM-M-59476-2024 (O&M)
DECIDED ON: 03.12.2024

SUKHVIR SINGH @ SUKHA

....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. V.K. Pujara, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

Ms. Mandeep Kaur Gill, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

CRM-47101-2024

Application is allowed, as prayed for.

CRM-M-59476-2024

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS has been invoked seeking regular bail to the petitioner in FIR No.48, dated 21.04.2024, under Sections 406 and 420 IPC, registered at Police Station Dakha, Ludhiana.

2. *Facts*

The facts as narrated in the FIR reads as under:-

Contents of Complaint No. 04-PC-3 Dated 03.04.2024 PGD 323204 Dated 23.03.2024 are as under. "To, S.H.O. Sahib, PS Mullanpur Dakha. Subject:- Complaint against Sukh Thothar Proprietor of Sukh Online Service, G.T. Road, Mandi Mullanpur for committing fraud of Rs. 1,75,000/- by receiving total amount for four up-down air tickets from Australia but not giving tickets of return journey to Australia. Sir, Requested that I, Amritpal Singh son of Kulwinder Singh am resident of Village Kot Mana, Tehsil Jagraon, District Ludhiana and I do agricultural work. My uncle (chacha) Gurinder Singh alongwith his family resides in Australia and my uncle (chacha) Gurinder Singh alongwith his family had to come from Australia to India. Thus, I had contacted Sukh Online Service, G.T. Road, Mandi Mullanpur and had booked up-down air tickets from Australia for all four of them, but Sukh Thothar Proprietor of Sukh Online Service gave four tickets of journey from Australia to India to us and for return tickets he said that there is some fault in online internet service, therefore he shall give return tickets in next few days and he sent us bogus Pdf File of tickets and received Rs. 1,75,000/- from me but later on he got cancelled the return tickets and kept the amount with him. On 10 March 2024 my uncle (chacha) Gurinder Singh alongwith his wife and two children came at India and they had to go back on 27 March 2024. When we tried to contact Sukh Thothar then his mobile phone was switched off. Accordingly, Sukh Thothar has committed fraud of Rs. 1,75,000/- with us. Requested that strict legal action be taken against above mentioned Sukh Thothar for receiving money from us for air tickets but not giving air tickets and our amount be recovered and returned to us please. I shall be highly thankful to you. Complainant:- Sd/- Amritpal Singh son of Kulwinder Singh resident of Village Kot Mana, District Ludhiana, Phone No. 98141-29636."

3. **Submissions**

On behalf of the petitioner:-

Learned counsel for the petitioner has submitted that the matter has been compromised between the parties with the intervention of the respectables of area, as the entire payment has been made to the complainant by the petitioner. Copy of compromise deed dated 14.11.2024 has been annexed with the present petition as Annexure P-2.

On behalf of respondent-State

Learned State counsel has prayed for dismissal of the present petition stating that the petitioner has duped lacs of rupees of the complainant.

As per the custody certificate filed by learned State counsel, the petitioner has suffered incarceration for a period of 2 months and 27 days, as of now, who is not involved in any other case of any nature whatsoever.

Learned counsel for the complainant does not controvert the factum of compromise effected between the parties.

4. Analysis

Considering the fact the parties have compromised the matter, meaning thereby, there is every probability that the petitioner will earn acquittal apart from the fact that challan stands presented on 04.11.2024, wherein, 25 prosecution witnesses have been cited, which is sufficient for this Court to infer that conclusion of trial would certainly take sufficient time, this Court is of the considered view that no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would also 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 Nimesh 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 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.

03.12.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

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