2024:PHHC:161144

242 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-59532-2024
DECIDED ON: 03.12.2024

PARMOD KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aakash Juneja, Advocate
for the petitioner. (Through hybrid mode)

Mr. Chetan Sharma, DAG, Haryana.

Mr. Ashutosh Gupta, Advocate
for the complainant.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

The jurisdiction of this Court under Section 483 BNSS has been invoked seeking regular bail to the petitioner in FIR No.296, dated 30.06.2024, under Sections 406, 419, 420, 467, 468, 471 and 120-B, registered at Police Station K.U.K.

2. Facts

The prosecution story set up in the present case as per the version of the FIR reads as under:-

''A complaint No. 922 dated 06.06.2024 was received at the police station through postal mail from the office of the Superintendent of

Police, Kurukshetra, which is as follows To, The Superintendent of Police, Kurukshetra. Subject: Application against 1. Basant Kumar (Mobile Number 98137- 43840) resident of Radaur, District Yamunanagar, 2. Parmod (Mobile Number 7988959007) resident of Village Chorpura, Tehsil Indri, District Karnal, 3. Assim (Mobile Number 9802544347) son of Shri Satyawan Sahrawat, resident of Kishangarh Manimajra, Chandigarh, 4. Manjeet Sahrawat (Mobile Number 9915510075) resident of Kishangarh Manimajra, Chandigarh, 5. Guri (Mobile Number 8437089914) Regarding cheating and fraud of Rs. 35,00,000/- (thirty-five lakh rupees) committed by the aforementioned accused in the name of sending abroad. Sir, the applicant humbly requests as follows 1. The applicant Shubham Chauhan, son of Shri Kuldeep Singh, is a resident of Village Amin, Tehsil Thanesar, District Kurukshetra, and is an educated, peace-loving person. 2. On 14.02.2024, I was at home in my village when I had a conversation from my mobile number 9896961323 with the number 8437089914, where the person introduced himself as Guri. He told me over the phone that he is involved in sending people abroad and that he only takes payment after sending them abroad. I was convinced by his words and sent all the required documents through WhatsApp from my friend Saurabh's and my maternal cousin Amit Kumar's phone. After reviewing all the documents, the accused assured me that he would get visas for Australia for both of us and send us to Australia. The accused then told me over the phone to deposit Rs. 36,00,000/-(thirty-six lakh rupeesj at shop number 24 - A in New Anaj Mandi, Pundri, with M/S Jati Ram Praveen Kumar Aadti (commission agent), saying that he would collect the money from the Aadti (commission agent) after sending us abroad. He also assured that if he could not send us abroad, the money would be returned to me. On 23.02.2024, I went with my friend Krishan Kumar to deposit Rs. 36,00,000/- (thirty-six lakh rupees) at shop number 24 - A in New Anaj Mandi, Pundri, with M/S Jati Ram Praveen Kumar Aadti (commission agent), and obtained a receipt on the Aadti (commission agent)'s letterhead However, on 26.02.2024, the accused informed me over the *phone that he could not send us abroad at that time and instructed me to collect the money back from the Aadti. I then retrieved my money from the Aadti and returned the letterhead receipt to him. 4. But a few days later, on 04.03.2024, the accused told me to go to Delhi Airport, where I would receive the visa and ticket. Following his instructions, on 04.03.2024, I went to Delhi with my friend Saurabh and my maternal cousin Amit Kumar. Then, with the wrong intention of cheating me out of my money, the accused told me to deposit Rs. 35,00,000/- (thirty- five lakh rupees) at shop number 26 M/S J.VG Trading Co. in Radaur Mandi, District Yamunanagar, stating that both visas had arrived. He also told me that I would need to go to Mumbai, where I would receive the visas for Saurabh and Amit Kumar. I went to Mumbai with Saurabh and Amit Kumar. Through my friend Krishan, I had the amount of Rs. 35,00,000/- (thirty-five lakh rupees) deposited at the address provided by the accused. At the shop number 26 M/S J.V.G Trading Co. in Radaur Mandi, District Yamunanagar, Basant Kumar (mobile number 98137- 43840), a resident of Radaur, District Yamunanagar, who was the Adati, was present along with Parmod (mobile number 7988959007), a resident of Village Chorpura, Tehsil Indri, District Karnal, who was the accountant, and Assim (mobile number 9802544347), son of Mr. Sagawan Sahrawat, and Manjit Sahrawat (mobile number 9915510075), both residents of Kishangarh, Manimajra, Chandigarh. All these accused conspired together, counted all the money from Krishan, and provided a receipt on the letterhead of shop number 26 M/S J.V.G Trading Co. for Rs. 35,00,000/- (thirty-five lakh rupees) to my friend Krishan Kumar. The next day, the mobile number 8437089914 of Guri was switched off, which made me believe that my Rs. 35,00,000/- (thirty-five lakh rupees) were safely kept with the Adati at shop number 26 M/S J.V.G Trading Co. in Radaur Mandi, District Yamunanagar. However, when I went to shop number 26 M/S J.V.G Trading Co. in Radaur Mandi, District Yamunanagar on 10.03.2024, I found the shop locked. On the same day, I went with my friend Krishan to the house of Vikram Singh, the real owner of shop number 26 M/S J.V.G Trading Co., in Village Hadtan, Radaur Mandi,* *District Yamunanagar. Vikram Singh informed me that he was the actual owner of the shop and that Basant Kumar and Parmod Kumar, along with the other accused, had conspired to create a fake letterhead of his shop and pretended to be the owners, thereby cheating me out of Rs. 35,00,000/- (thirty-five lakh rupees). Vikram Singh called Basant Kumar, Parmod Kumar, and Assim to his home in Village Hadtan on 11.03.2024. Everyone sat together and held a meeting (panchayat). During this meeting, Assim, through one of his friends, reported to Dial 112 that he had been kidnapped. Shortly afterward, the police arrived, and everyone present was called to the Kheri Lakha Singh police post. The next day, on 12.03.2024, a panchayat was held at the police post, during which the accused returned Rs. 3,85,000/- to me. In this meeting, the accused asked for time until 27.03.2024 to return all the money, with the responsibility for ensuring payment taken by Surender, the Sarpanch of Lavana village. On 19.03.2024, Basant Kumar's son Sahil transferred Rs. 1,00,000/- to my bank account, and on the next day, 20.03.2024, Rs. 1,12,000/- was given to me. After this, on 27.03.2024, all the accused and Surender, the Sarpanch of Lavana village who had taken responsibility for payment, started making excuses over the phone. Subsequently, I filed a complaint, No. 166-KB, on 04.04.2024 with the Superintendent of Police, Kurukshetra. The Economic Cell, Kurukshetra summoned the accused, and they promised to resolve the matter by 06.05.2024. They also provided an affidavit on 19.04.2024, including two checks: one for Rs. 10,00,000/- dated 20.05.2024, and another for Rs. 13,20,000/- dated 25.05.2024. When I presented the first check at the bank on 20.05.2024, it bounced on 21.05.2024. The second check, which I deposited on 30.05.2024, also bounced. All the accused conspired to defraud me by pretending to secure an Australian visa and sending me abroad. They created a fake letterhead, provided me with a receipt for Rs. 35,00,000/- and deceived me. I suspect that Assim, son of Mr. Satyawan Sahrawat, residing in Kishangarh, Manimajra, Chandigarh, was impersonating Guri and communicating with me through phone number 8437089914. I have documents related to this application which I can present upon request.*

Request: Therefore, I request that considering the above facts, strict legal action be taken against the accused by a competent officer, and my money be recovered from the accused, so that the common man's faith in the administration remains intact.'

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 direct evidence to connect the petitioner with the alleged fraud. He has placed reliance upon the orders dated 23.08.2024 & 06.09.2024 passed in CRM-M-40755-2024, 42641-2024 (Annexures P-3 and P-2) whereby the co-accused of the petitioner namely Assim has been granted the concession of anticipatory bail and Manjit Singh has been granted the concession of regular bail by this Court. He has further argued that the antecedents of the petitioner are clean. He submits that no fruitful purpose would be served by keeping the petitioner behind the bars as conclusion of trial would take long time.

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 the last 4 months and 10 days. He prays for dismissal of the present petition stating that the petitioner is the main accused, who has taken the money from the complainant.

4. Analysis

Be that as it may, considering the fact that the offence is not against the society at large; his antecedents are clean, meaning thereby he is not a habitual offender, co-accused have already been enlarged on bail by this Court, 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 10.09.2024 wherein, 20 prosecution witnesses have been cited, which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and 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. **<u>Decision:</u>**

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
Sham

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