

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

107

CRM-M-374-2024  
Date of Decision : January 30, 2024

PANKAJ GOYAL -PETITIONER

V/S

STATE OF HARYANA -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Kamal Sehgal, Advocate  
for the petitioner.  
  
Mr. Bhupender Singh, D.A.G., Haryana.

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KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, the petitioner, who is/was a Director in the Company, namely, Blue Fox Motion Picture Pvt. Ltd., craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.490 dated 23.07.2022, under Sections 406, 420 of the IPC (Section 120-B of the IPC added subsequently), registered at P.S. Gharaunda, District Karnal.

FACTUAL MATRIX

2. What constituted the bedrock for registration of the instant FIR, was a complaint made by one Narender Kumar Tyagi (hereinafter referred to as the ‘complainant’). The brief facts of the instant case, as extracted in the order dated 05.10.2023 (Annexure P-4), whereby, the learned Sessions Judge, Karnal, has dismissed the regular bail application of the petitioner, are reproduced hereinafter:-

*“Brief facts of the case are that in 2017 Dharambir and Ashwani*

*came to the complainant Narender Kumar Tyagi and told him about scheme of Blue Fox Motion Pictures Limited, making payment of Rs. 2,50,000/- against investment of Rs. 1,00,000/-. Complainant was also taken in a seminar of a company and upon this he gave amount of Rs. 10,000/- to Bharat Bhushan and Sompal @ Som Dutt in Sector-13 at Nirmal Kutiya Road. Rs. 1,00,000/- was also given in the village on the asking of Dharambir and Ashwani. Rajesh and Rakesh also made investment in the company. Upon demand, the money was not given. On 5.10.2018, directors of the company made settlement with the complainant of case in FIR No. 130. It was also disclosed that their money has been invested in crypto currency. Dharambir and Parmila gave complaint to the Superintendent of Police regarding the criminal intimidation made by Bharat Bhushan, Sompal @ Som Dutt and Ashwani. It was also alleged that Bharat Bhushan used to extend threats to him through Mohali Police, PS Dhakoli. Parmila settled the matter with the directors of the company in case FIR No. 659. Parmila and Dharambir also extended threat to him and it was stated he would be involved in the case of outraging of modesty.....”*

### **SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER**

3. The learned counsel for the petitioner, in his asking for the hereinabove extracted relief, has made the following submissions:-

- (i) Neither the petitioner has been assigned any specific allegation in the instant FIR, much less any allegation qua entrustment of any money to him, nor he is a beneficiary of the allegedly embezzled amount, nor the investigating agency is seized of any concrete evidence to establish his culpability;*
- (ii) There is no evidence available on record, which may even remotely indicate the occurrence of any transaction inter se the complainant and the petitioner;*
- (iii) The petitioner has, merely being Director of the*

*Company concerned, falsely been implicated in the instant FIR;*

*(iv) Nonetheless, even if the allegations are taken to be a gospel truth, yet the FIR carries allegations qua embezzlement of Rs. 1 lac only, and as such, these allegations are not so grave, which may debar the petitioner from either seeking or reaping the concession of bail;*

*(v) Petitioner's co-accused, namely, Parmila @ Promila and Dharambir, against whom complainant has levelled categoric allegations, have already been granted the concession of bail by the learned Sessions Court concerned;*

*(vi) Petitioner has suffered sufficient incarceration, as he has been behind the bars since 13<sup>th</sup> April 2023;*

*(vii) Since charges have been framed recently on 04.01.2024, therefore, conclusion of trial would take a sufficient long time, and as such, keeping the petitioner behinds the bars would serve no gainful purpose;*

#### **SUBMISSIONS OF THE LEARNED STATE COUNSEL**

4. *Per contra*, the learned State counsel has vociferously opposed the grant of regular bail to the petitioner, on the ground that, the hereinafter extracted paragraph No.8 of the status report dated 24/25.01.2024 clearly speaks about the culpability of the petitioner. Furthermore, by drawing attention of this Court towards criminal antecedents of the petitioner, inasmuch as, he is involved in nine other cases of cheating, the learned State counsel has prayed for dismissal of the instant petition.

*“8. That as per investigation the present petitioner was Director of*

*the company and played an active role in the commission of the offence and also received amount from the investment made by private persons in private company. It is further submitted that as per investigation the account number 09391000007637 and account number 5010126862002 HDFC Bank has been found in the name of co-accused Dharamvir Singh and he has issued cheques which were issued to the investors and same were dishonoured.”*

### **ANALYSIS**

5. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535***. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

6. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

7. In ***“Nikesh Tarachand Shah V. Union of India”, (2018) 11 SCC 1***, the Hon’ble Supreme Court has recorded the following:-

*“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-*

*“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor [AIR 1924 Cal 476, 479, 480 : 25 Cri LJ 732] that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be*

*deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.*

28. *Coming nearer home, it was observed by Krishna Iyer, J., in Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115] that: (SCC p. 242, para 1)*

*“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”*

29. *In Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)*

*“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”*

30. *In AMERICAN JURISPRUDENCE (2d, Volume 8, p. 806, para 39), it is stated:*

*“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary*

*inquiry is whether a recognizance or bond would effect that end.”*

*It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”*

8. Also, in ***Siddharam Satlingappa Mhetre v. State of Maharashtra, Criminal Appeal No.2271 of 2010***, the Hon’ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual’s liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

*3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.*

9. Be that as it may, this Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

10. The reason for forming the above inference, however, without making any observation *qua* veracity of the allegations, emanates from the

factum that:- (i) the petitioner has, indisputably, suffered sufficient incarceration, inasmuch as, he has been behind the bars since 13.04.2023; (ii) though the petitioner is involved in nine other criminal cases, however, the learned counsel for the petitioner submits that, just to exaggerate the magnitude of offence(s), instead of registering a single FIR, multiple FIRs have deliberately been registered, in respect of a single company; (iii) there is no likelihood of the trial, which is indeed a magisterial trial, concluding anytime soon, as charges are admittedly framed on 04.01.2024, therefore, keeping the petitioner behind bars would serve no fruitful purpose.

### **FINAL ORDER**

11. Considering the hereinabove made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

12. It is clarified that anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

January 30, 2024  
devinder

(KULDEEP TIWARI)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No