



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

Sr. No.324

**CRM-M-60867-2024 (O&M)
Date of decision : 09.12.2024**

JARNAIL SINGH BAJWA

..... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

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

Mr. R.S. Thind, DAG, Punjab.

Mr. K.S.Kang, 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.53 dated 13.04.2024, under Sections 406 and 420 IPC, registered at Police Station NRI, District SAS Nagar, Mohali.

2. The translated version of the FIR is reproduced below:-

'An order No. 10401/Nodal Desk-1 (2) N.R.I Wing, dated 10.04.2024 together with documents has been received from office of Additional Director General of Police, N.R.I Wing, Punjab, as per which one complaint U.I.D NO. 2399953 dated 20.04.2023 was given by Kulwant Singh Hundal son of Trilok Singh resident of village Kotli, Tehsil and District Jalandhar, presently resident of America to Director General of Police, N.R. I Wing, Punjab, S.A.S. Nagar, the contents of which are as under:- "ADGP Punjab Police, NRI Wing, Subject: - Refusal to give possession of fully paid plot in Sunny Enclave. Sir, With utmost dismay and disappointment, I, Kulwant Singh Hundal son of s.Trilok Singh R/o village Kotli P.O Sarobad, Tehsil and District Jalandhar, currently resident at 2053, Mustang Dr, Naperville, IL, 60565, USA do hereby solemnly wish to lodge the following complaint against S. Jarnail Singh Bajwa s/o S.Bishan Singh Bajwa Managing Director Bajwa Developers Limited Registered Office Sunny Enclave Desu Majra, Tehsil Kharar. On 15/12/2013, I paid the full amount of Rs. 42 lacs to purchase a plot in Sunny Enclave. I was



shown and allocated ., a plot # 1620 in Sunny Enclave, Sector 123, measuring 250 sqw. Yards. When I asked for possession of the plot I was told that PUDA did not approve the site and instead I have been allotted plot # 952 in Sunny Enclave. On Feb. 16,2023 I applied for No Dues Certificate and till today I have been just given run around and harassment on one or the other pretext. I humbly the above said plot, then respondent Jarnail Singh Bajwa said that PUDA had not approved the said site, therefore, respondent allotted Plot No. 952 to Kulwant Singh. On 16.02.2023, Kulwant Singh applied for No Dues Certificate of above said plot No. 952, which he has not got till date. Despite giving of Rs. 42 lacs by complainant to Jarnail Singh Bajwa regarding purchase of plot, till date Jarnail Singh Bajwa has not given any plot to complainant. In the enquiry of above said complaint, complainant has not produced his any statement in writing. Complainant has sent copy of agreement to sell, copy of receipt regarding receiving money by respondent party through his whatsapp No. +6309950670 and stated that his brother Bupinder Singh Hundal shall pursue his complaint and he cannot come due to ill health. Copy of whatsapp message is attached with the report. Respondent Jarnail Singh Bajwa despite taking Rs. 42 lacs from complainant regarding purchase of plot, has not given possession of plot to complainant till date, nor by returning his money and thus has committed an offence under sections 420, 406 IPC. Therefore, it is recommended to register case FIR under sections 420, 406 IPC against respondent Jarnail Singh Bajwa." Enquiry report was sent to Additional General of Police N.R.I Wing, S.A.S. Nagar, Punjab through senior officers, who sent the report to Law Officer, N.R.I Wing, S.A.S. Nagar for obtaining legal opinion. Law Officer, N.R.I Wing, S.A.S. Nagar has written in his opinion that, "In my opinion, if the enquiry report of Superintendent of Police/N.R.I Wing/S.A.S. Nagar is based on true facts, then prima facie offence under section 406, 420 IPC is made out against respondent party 1) Jarnail Singh Bajwa. If during investigation, any other facts come to the light, then sections and accused can be added/deleted accordingly. If approved, Station House Officer, Police Station N.R.I, S.A.S. Nagar be ordered to register case FIR. Even then, the decision taken by you shall be final and acceptable. Report is submitted." At this, the office of A.D.G.P/N.R.I Wing Punjab while giving consent ordered, "A" approved. Register FIR & investigate as per law." Said order together with documents has been received vide letter order NO.10401/Nodal Desk-1 (2) /N.R.I Wing dated 10.04.2024 and in compliance thereof, it has been ordered to register case FIR against respondent party 1) Jarnail Singh Bajwa son of Bishan Singh Bajwa, Director Bajwa Developers Private Limited, Sunny Enclave, Kharar, District S.A.S. Nagar (Mohali) resident of House No. 1002-1003, Sector 71, S.A.S. Nagar, whereupon case FIR No. 53 dated 13.04.2024 under sections 406, 420 IPC has been registered against respondent party 1) Jarnail Singh Bajwa son of Bishan Singh Bajwa, Director Bajwa Developers Private Limited, Sunny Enclave, Kharar, District S.A.S. Nagar (Mohali) resident of House No. 1002-1003, Sector 71, S.A.S. Nagar. Complaint together with enquiry report, original documents and copy of FIR has been handed over to A.S.I Bachitter Singh 18/SBSN for further investigation. Control Room has been informed telephonically. Copies of the F.I.R are being sent to Illaga Magistrate and higher officers. Completion Report No. 14 dated 13.04.2024."



3. At the very outset, learned counsel for the petitioner submits that the matter has been compromised between both the parties and amount of Rs.40,00,000/- has been paid and two post dated cheques have been issued for balance amount to the complainant out of total settlement amount of Rs.75,00,000/-. He has supplied a copy of compromise deed dated 18.09.2024 in Court today, which is taken on record. The petitioner has undergone an actual custody of 02 months and 26 days.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. 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 & 26 days and is involved in 23 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 factum of settlement.

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

7. Admittedly, the petitioner has undergone an actual custody of 02 months & 26 days 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”**.

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. Admittedly the parties



have settled the dispute and 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.

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

09.12.2024
Kavita

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