IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

230 **CRM-M-61538-2024**
DATE OF DECISION: 12.12.2024

MONIKA **...PETITIONER**

Versus

STATE OF U.T CHD **... RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. H.N. Sahu, Advocate for the petitioner(s).

Mr. Vivek Singla, Advocate
with Ms. M.N. Jajoria, Advocate
for UT Chandigarh.

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SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 483 BNSS, 2023 (erstwhile Section 439 Cr.P.C.) for grant of regular bail to the petitioner in case FIR No.92, dated 10.08.2024, under Section 406, 409, 420, 467, 468, 471, 120-B of IPC, 1860, registered at Police Station Cyber Crime, Chandigarh, District Chandigarh.

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

> '*Statement of Ganesh Mal S/o Lt. Sh. Shankar Lal R/o Village Khinyala, Tehsil Jalyal, P.S. Jayal, District Nagour (Rajasthan) age 52 years, Mob. No. 6367702594. Stated that I reside at the above address alongwith my family. And do the work of Carpenter in my village itself. In April 2024, I saw add of one Visa Company Global Consultant SCO No.292, 1st Floor, Sec 32-D, Chandigarh on my Facebook ID and called on the Mob. No. 7529864834 given in this add. One girl picked the phone and told that their company do the work of sending to Azerbaijan and told*

her name as Gazal Kapoor and for getting more information called in office Chd. I along with my son-in-law (Damed) Vikas came to their office Sec 32D on 25.4.24, met Gazal Kapoor. At that time in her office, three girls and two boys were working, they told us that they send group of 25/30 persons for working in Azerbaijan, in which Carpenter, labourer, anyone can be there and the total expenses for sending to Azerbaijan will come to Rs. 1,35,000/- per head. In which they will get done the entire process, Air Ticket etc, in the same and will also provide them work upon reaching at Azerbaijan and their Azerbaijan salary will be Rs. 1 lakh per month. She also said that half money after offer letter and rest of the money will have to be given upon getting visa. I found their offer to be good and as group was going, then I told about the same to the persons of my village and to some known persons of the adjoining villages. For the same, some from my village and some from other village got ready. Regarding the same, I talked with Ghazal Kapoor in the above Visa company. She told us to send our respective Passport through courier. In the beginning. I sent her Passport of 5 persons through post and through Whatsapp. The above company, for these five Passport, for one EVRASCON Company made Offer letter of Azerbaijan and sent the same on Whatsapp to me. After that they demanded Rs. 25,000/- from me. As per their asking, on 28.5.2024 I sent the same on their UPI ID- gaggarwal206-1@oksbi, which was in the name of Shubham, from my daughter Saraswati's A/c No. 83010221250, Rajasthan Marudhar Gramin Bank through Google pay. I showed this Offer letter to my other acquaintance and told them, then they also became ready. Apart from us 5 persons, whose Offer letter had come, other persons became ready to go to Azerbaijan and they also gave their respective Passport to me. I also sent the same to the above Grobal Consultant Company Chd through Whats app and Post. They also sent their offer letter to me on Whats app, after that they started saying that you all have to give Rs. 50000/- now. On 9.6.24, 1 sent Rs. 50000/- on their above UPI ID from the above A/C of my daughter Online. After that they again telephonically called on 9.6.24 that you Visa has come, you come *and deposit your half money. On 10.6.24, I along with my five fellows Pappu Ram, Kamal, Dwarka Parsad and Driver Suresh came to their office Sec 32D Chd and gave Rs. 1109000/- to them in cash as per their asking. They made a receipt of the same and gave it to me and on 10.6.24, itself myself from my daughter Saraswati's above A/c Rs. 50000/-, 50000/- 9000, 109000/-, from Surender's A/c 15000/-, 60000/-, 25000/-, 15000/-, 25000/- 140000/- and from Dwarka Parsad A/c 50000/- and from E-Mitra ID 49000/- 49000/- 40000/- 1999 Total Rs. 139999/-, sent the same on the above UPI ID Shubham given by them online. Which in total comes to 438999/-. After that they told that your ticket is ready for 15.6.24 and give the balance amount. For sending total 27 persons, talk took place for Rs. 35,00000/- (Thirty-five lakh). Then on 11.6.24, myself from the A/c of my daughter Saraswati, as per their asking sent 50000/- 50000/- 100000/- in UPD ID of Shubham and from A/c of Ramvilas I the A/c of above Subham 49000/- 2000/- 48000/- 99000/- and from EMitra Rs. 50000/- were sent in Kamal's UPI ID gaggarwal206-1@oksbi. On 11.6.24, total Rs. 2,49,000/- were sent to their A/c online. On 12.06.2024, from E- miter 49000/- in the A/c of Subham given bythem and 50000/-in A/c of Kamal, Total Rs. 99000/- were sent Online. After that they by taking the total amount in cash, called to their office and told us regarding giving Ticket and Visa. On 13.6.24, I along with my son-in-law (Damad) Vikas came to their office ad Chd and gave them Rs. 1300000 (Thirteen lakh) rupees in cash. They had not given any receipt of the same to us and gave us Visa, Passport and Air Ticket of everyone and started saying that we have given all your documents to you, there is no need of its Receipt because Tax is applicable on the same and the remaining 46000/- 46000/- 50000, 142000/- were deposited from the A/c of Saraswati in the A/c of their above Shubham and Rs. 40000/- were deposited in the above A/c through E-mitra. After that Rs. 40000/- were deposited in their above A/c from the A/c of Hukma Ram. In this manner, we by completing 3500000/-, gave the same to them. Our Ticket of 15.6.24 was from Delhi Airport. When we all 25 persons reached Delhi Airport then we came to know that our Ticket has been made* *in Duplicate. When we tried to call them, then all their numbers were off. They are having some other mobile n. 7888738567, 7529864834 and 8360819841 and 9115139787 and the Email ID given on their card is consultantglobal23@gmail.com. Myself and other 26 persons with whom cheating has been committed. Their names are 1. Girdhari Jangir, Village Keshap 2. Dwarka Parsad Village Khilaya 3. Bhowar lal Meghwal village Sagu 4. Rupa Ram Meghwal, Village Keshap 5. Sayar Ram Nayak Village Keshap 6. Suresh Meghwal Village Keshap 7. Lodo Ram Meghwal Village sagu 8. Jeevan Ram nai Village Deh 9. Shivram Village Kathoti, 10. Gopal Chati Village Khiyala 11. Babulal Jangir Village Kiyala, 12. Jetharam Jangir Village Ran Sisar 13. Kamal Kishore Rewar Village Rojond, 14. Kishore Nayak Village Keshap, 15. Paban Kumar Village Keshap 16. Ram Singh, Village Sagu 17. Ashok Kumar Village Keshap, 18. Choturam Village SAgu, 19. Jagdish Village Khiyala, 20. Vikas Jagir Village Dehri, 21. Arjan Ram Village Igyar (Adwad), 22. Kamal Village Khiyala 23. Kanihya Lal village Adwad, 24. Rattan Lal, Village Khund, 25. Ravishankar Village Dugoli, 26. Ashok Vidyasar Village Khiyala, 27. Banwari Lal Sain Village Akhrot. They refused to send me and Gopal Rathore. The persons of above Visa Company Global consultant have committed cheating of about Rs. 3500000/- Thirtyfive lakh rupees in the name of sending us to Azerbaijan and by preparing wrong documents, have prepared fake documents. Now they have fled away somewhere by closing their office.'*

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 delay of 2 months in lodging the FIR. He submits that the name of the petitioner was not even mentioned in the FIR and she has not received any money or is a beneficiary of the transactions. He further submits that neither the petitioner signed any document, nor any entry was made by her in any register or book etc. He asserts that as per the allegations the petitioner was working under the name Jhanvi. He has argued that co-accused namely Mehak Kapoor has been granted regular bail by this Court vide order dated 18.11.2024 passed in CRM-M-57027-2024. He points out that the antecedents of the petitioner are clean, meaning thereby, she is not a habitual offender.

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 3 months and 10 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner along with other co-accused duped a total amount of Rs. 35 lakhs approximately on account of work visa, 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. 3 months and 10 days, there is unexplained delay of 2 months in lodging the FIR, the name of the petitioner was not mentioned in the FIR, moreover, she has not received any money and co-accused has already been granted regular bail by this Court and antecedents of the petitioner are clean, meaning thereby she is not a habitual offender, and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, thus, 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.*
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> *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 her 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, stand allowed.

(SANDEEP MOUDGIL)
JUDGE

12.12.2024
anuradha

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