

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3624-2025 (O&M)

Date of Decision: 10.02.2025

Sukhwinder Kumar & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Nikhil Ghai, Advocate and
Mr. GS Gill, Advocate for the petitioners

Mr. JS Rattu, DAG Punjab

Mr. RK Jaswal, Advocate and
Mr. Divij Datt, Advocate for respondent No.2

Sandeep Moudgil, J.
Relief claimed

(1). This petition has been filed under Section 483 of BNSS of 2023 for grant of regular bail to the petitioners in FIR No.215 dated 27.09.2023 (Annexure P-1) u/s 174-A IPC registered at P.S. Kharar, District SAS Nagar Mohali arising out of Complaint No.73 of 2017 dated 09.11.2017 (Annexure P-2) u/s 406, 420, 120-B IPC, Titled as 'Cdr Kuldeepak Mittal versus J.S.Bajwa' pending before CJM, SAS Nagar Mohali.

Facts

(2). Facts as emerging in the FIR is reproduced as under:-

“In the case titled Kuldeepak Mittal vs. J.S. Bajwa and others, with CNR No. PBSAA10012292017 and CIS No. CRM/73/2017, Sh. J.P. Bains, Advocate, appeared as counsel for the complainant. The accused No. 3 is a firm, while accused No. 1, 2, and 4 did not appear. The original file was received from the Learned Appellate Court. The court observed that proclamation for accused J.S. Bajwa, Sukhwinder Mohan Lal, and Baldev Singh had been duly executed. Serving constable HC Parminder Singh appeared in court and stated that he executed the proclamation on

12.03.2021 as directed by the court. He presented the proclamation warrants as Ex.PA, Ex.PB, and Ex.PC, along with reports as Ex.PA/I, Ex.PB/I, and Ex.PC/I respectively. Since the statutory period of 30 days had elapsed without the accused appearing in court, they were declared proclaimed persons. The court directed that an intimation be sent to the SHO for initiating proceedings under Section 174-A IPC. A copy of the order was also directed to be sent to the SSP, SAS Nagar, Mohali. The case was adjourned to 24.08.2022 for the complainant's evidence under Section 299 Cr.P.C. The order was dated 04.07.2022 and signed by Judicial Magistrate Ist Class, Sudipa Kaur, with Neeru acting as the stenographer. As per the police report, after receiving the court's order, a case under Section 174-A IPC was registered against accused Sukhwinder Mohan Lal and Baldev Singh Bajwa. The court had also directed action against Jarnail Singh Bajwa, but he filed a petition (CRM-M-50259-2022) in the Punjab and Haryana High Court, Chandigarh, where his bail was granted. Jarnail Singh Bajwa appeared before the Kharar Court on 15.11.2022 and submitted his bail bonds. Consequently, no further action under Section 174-A IPC was taken against him. The proceedings against Sukhwinder Mohan Lal and Baldev Singh were completed, and copies of the FIR were forwarded to the concerned Magistrate in Kharar and other relevant officers. The Control Room in Mohali was informed via telephone. The original court orders and FIR were handed over to the Station House Officer for further investigation, and the Head Constable was instructed to update the records accordingly."

(3). The above-said FIR arises out of the complaint under Section 200 CrPC dated 09.11.2017 (Annexure P2) filed by the complainant/respondent No.2 against the petitioners who allegedly made the complainant invest Rs.2.4 crores in a partnership firm under the name of Sunrise Future City and thereafter backed out of the agreement causing loss to him.

Submissions of the petitioner

(4). Learned counsel for the petitioner submits that the petitioners are the builders having developed various residential and commercial projects in Mohali and they are into the development business for last many years and had

successfully completed projects and gave possession of various projects to the buyers. It is averred that due to financial crunch on account of covid pandemic, some of the buyers filed complaints against the petitioners. He submits that ever since the filing of numerous complaints, the petitioners have already settled/compromised the matter with 10 complainants against which the quashing petitions are also pending as is evident from the orders passed in this Court as well as the Supreme Court which are annexed as Annexures P22 to 32 showing that the petitioners have been granted bail or the mediation/settlement proceedings are underway.

(5). It is argued that as far as petitioner No.1 is concerned, there are total 6 FIRs pending against him wherein the matter stands compromised with the buyer and petitioner No.3 had filed CRM-M-50259-2022 for quashing of the order dated 04.07.2022 vide which he was declared Proclaimed Offender as he could not appear on 02.03.2020 due to business engagement as he was trying to settle matter with various investors but the Magistrate wrongly cancelled the bail/surety bonds and summoned the petitioners through non-bailable warrants for 12.03.2020 and thereafter due to Covid pandemic and in pursuance to the general directions issued by the superior courts, the petitioners were under the belief that their personal appearance was not required and subsequently came to know that they have been declared proclaimed offenders vide order dated 04.07.2022. It is argued that FIR could not have been registered under Section 174-A IPC and only a complaint under Section 200 CrPC could be filed as the offence is non-cognisable and as such, the FIR is not maintainable.

Stand of the State

(6). Learned State counsel has filed the custody certificates dated 08.02.2025 which are taken on record, according to which, the petitioner No.1-Sukhwinder Kumar has undergone 5 months and 6 days of custody with 6 pending FIRs; petitioner No.2-Baldev Singh Bajwa has undergone 4 months and 19 days of custody with 7 pending FIRs; and petitioner No.3-Jarnail Singh Bajwa has undergone 4 months and 18 days of custody with as many as 18 FIR which are still pending and in 7 FIRs, he has earned acquittal whereas in 17 other FIRs, production warrants have been issued against him. He submits that in the present FIR No.215 dated 29.09.2023, pursuant to submission of challan on 08.11.2024, charges have not yet been framed and out of total 8 PWs, none have been examined till date.

(7). Mr. Rattu, learned DAG Punjab vehemently opposed the prayer for grant of bail to the petitioners on the ground that despite issuance of summons, the petitioners deliberately chose not to adhere to the courts orders and as such, they were declared as proclaimed offenders in due course of law and by this very fact, since the petitioners have tried to hoodwink the court process, there is every possibility that they might abscond the trial proceedings. He further argued that the petitioners are history-sheeters and have number of other pending cases of fraud and cheating with the investors and poor buyers already pending against them and in such circumstances, it would not be appropriate, at this stage, to release them.

Analysis

(8). Heard learned counsel for the parties.

(9). When this matter came up for preliminary hearing on 28.01.2025, this Court passed the following order:-

“Learned counsel for the petitioner volunteers to settle the matter with the complainant and in that endeavour to show his bona fide has stated to pay an amount of Rs.1 crore as a part payment of the disputed amount by way of a demand draft, which he will hand-over to the complainant/his counsel on the next date of hearing.

To come up for further consideration, adjourned to 10.02.2025.”

(10). Today, counsel for the petitioners, at the outset, submits that though the petitioners have brought two demand drafts amounting to Rs.1 crore but he has instructions to hand over the said instruments only if they are granted the concession of bail by this Court.

(11). It appears that before the trial court, three applications were filed and the trial court passed order dated 01.10.2024 in BA-3004-2024 filed by petitioner No.1-Sukhwinder Kumar on 18.09.2024 whereas BA-3422-2024 & BA-3421-2024 which were filed by petitioners No.2&3 on 21.10.2024 which were decided vide common order dated 08.11.2024. The petitioners instead of filing separate petitions have conjointly approached this Court impugning two orders vide which the trial court rejected their prayers for regular bail separately. The petitioners in these cases have not appeared before the trial court despite grant of bail and issuance of process and vide order dated 04.07.2022, they were declared PO.

(12). This Court has to assess, though prima facie, the severity and involvement of each accused in a petition and based on the averments and counter thereto as well as the findings returned by the trial court in regard to the said petitioner and thereafter can come to the conclusion if, the relief sought by

that very accused person deserves rejection or acceptance. There appears to be clever stratagem on the part of the petitioners so that the severity of the collective liability incumbent upon each of them deflects the attention of the court by intermingling and mis-joining of parties and therefore, the petitioners cannot maintain a single petition against two separate trial court orders rejecting bail on different date.

(13). This Court is astonished by the petitioners' conduct, which appears to be an attempt to procure a regular bail order through improper means, unacceptable in any judicial proceeding. Notably, the production of demand drafts worth Rs.1 crore by the petitioners itself amounts to a tacit acknowledgment of their culpability in misappropriating funds, thereby underscoring their obligation to provide restitution to the complainant/respondent which they are willing to submit only when this Court accedes to grant them regular bail. The act of the petitioners in bargaining or negotiating with the court for handing over the accepted due in the form demand draft to the complainant, only in exchange of acceptance of bail plea is deprecable and indeed contemptuous.

(14). An accused person in a criminal case does not have the power to force a court to grant them bail, for, the decision to grant or deny bail rests solely with the court based on the facts of the case and applicable laws, and the accused cannot dictate the court's decision on bail. Various factors such as the seriousness of the charge, the nature of the evidence, the severity of the potential punishment, and the accused's character, means, and status needs to be considered.

(15). In the present case, as can be seen, it was in pursuance to the order dated 04.07.2022 passed by the Area Magistrate that the instant FIR came to be lodged wherein the allegation was despite issuance of summons, the petitioners have not appeared before the Court leading to initiation of proclamation proceedings and the petitioners were eventually declared proclaimed offender vide order dated 04.07.2022. If at all in the complaint filed by Kuldeepak Mittal in CIS-CRM-73-2017 wherein the court had summoned the petitioners that *ipso facto* does not give a key to the petitioners to evade the process of law inasmuch as, it was only after following the due process of law and when the petitioners avoided service of summons on the given address, the trial court was left with no option but to exercise the powers under Section 174-A CrPC and declare the petitioners as proclaimed offender. Furthermore, the previous instances cited by the petitioners highlighting compromise with the investors or grant of bail by the courts does not weigh much on the judicial mind of this Court, for, every case has its own facts and it is after considering the peculiar circumstances of the given case only this Court can arrive at a just conclusion to extend or deny the concession of bail to the accused person. In this case, the petitioners have utterly failed and rather worsened their case to convince this Court to exercise the extraordinary jurisdiction under Section 483 BNSS.

(16). No case for grant of regular bail to the petitioners is not made out.

(17). The petition is thus dismissed, also, being not maintainable.

(18). However, nothing expressed herein shall, in any manner, influence the trial Court.

10.02.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No