



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

320

CRM-M-4659-2025

DATE OF DECISION: 04.02.2025

SHAKUNTLA

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saleem Ahmed, Advocate for the petitioner(s).

Mr. B.S.Virk, Sr. DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

This petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail in FIR No. 179 dated 03.07.2024 under Sections 406, 420 and 34 IPC registered at P.S. Sadar Tauru, District Nuh.

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

‘To SHO Police Station Tehsil Tauru, Nuh. Subject: Request regarding cheating in the name of making jewelry and to register FIR against the accused and to get our money back. Sir, request is that Sunita wife of Sombiru is the permanent resident of Rathivas, Tehsil Tauru District Nuh (Haryana). In our village, a goldsmith Dharmendra Soni along with his family wife Sakuntala wife of Dhamendra Soni and sons Neeraj Soni, Anish Soni S/o Dhamendra Soni, two daughters-in-laws Chhaya wife of Anish Soni, Deepmala wife of Neeraj Soni were residing



on rent in the house of Jaibeer Singh son Shahzad resident of Rathivas for the last 3 years. First of all this person made his trust in our village due to which we came under his trust and gave him the money earned by our hard work, which was kept for the marriage of our children. That the accused Dharmendra Soni, who was living in our village and had a goldsmith shop and had built a good deal of trust in the village in the transaction. That he after taking money in advance from people in lieu of making jewelry, vacated his house and shop and fled from the village on 22.06.2024 without informing anyone. Information of which, when we tried to get from many places, we could not find anything and when we tried to get information about him from Jaiveer son of Shahjahan, we were sent away by the landlord saying that he has also taken Rs.3 lakh from him. Sunita wife of Somveer is the resident of Rathivas Tauru, Tehsil Tauru District Nuh, whose account no.77150101019406 is in Sarva Haryana Gramin Bank Rathivas Tauru in which she gave cheque of Rs. 1, 00,000/-to Anees resident of Kharkhoda Sonipat, whose bank no.847223 dated 03.05.2023 and it, was already encashed. A cheque no.847224 dated 03.05.2003 of Rs.1, 00,000/-was given to Sukantala wife of Dhamendra Soni Resident of Kharkhauda Sonipat and both the cheques have been encashed. I came to know that Dharmendra Soni has also cheated money from other people of our village and fled away, in which he cheated Rs.1.70 lakhs from Seelam Patri Narendra and Rs. 5 Lakhs from Geeta wife of Mukesh and fled away and he has taken money from Naresh son of Zile Singh and fled away and also taken money from Jaggi Sarpanch of Khorikalan and fled away and we had a self-help group whose head was Shakuntala wife of Dharmendra Soni. And she also took Rs.2 lakh from that group as well. Before living in the house of Jaibeer, he was living in the house of



Santram son of Mukhyar resident Rathibas for 9 years. Suman the mother of Mrs. Chhaya wife of Aneesh (daughter-in-law of the accused Dharmendra), who lives in village Tauru Jatwada Mohalla, there we all called the police by calling on 112 number, then they called a person named Sachin Soni, he said that you all will get your money within two-three days, I will solve this and we came to our house taking false assurances of this. But Sachin Soni is now clearly denying that he does not know anything about them, he has nothing to do with this. You can do whatever action you want to take. Sir, Dhamendra Soni, Mobile No.8684032990, Sakuntala wife Mobile No.8684067126 and Neeraj Soni, Mobile No.8813802642, all of their mobiles are switched off since a long time. The entire family of Dhamendra Soni is also involved in this fraud. This family cheated us and many other people in the name of making jewelry and fled. We had no idea that the accused are liars and 420 types of people. We were under false pretenses and were given money for jewelry for our children's wedding in the village. We were completely unaware that such an incident could happen with us. Hence, it is requested to please take strict action against the accused and get our money back which was extorted from us by making 420. We are all poor women, if we do not get justice, then our rights will be violated. By keeping in mind this serious problem of ours, this should be resolved, So that we can get our money. It will highly thankful to you. Dated 03.07.2024 SD-Sunita Applicants Sunita Devi wife of Sombir resident of Rathivas Tehsil Tauru District Nuh (Haryana). 9728279652. Police Proceeding: Today I, SI along with CT Mukesh 996/NUH, SPO Ravindra 54/NUH were present at Khori Kala bus stand for patrolling crime investigation that the above mentioned complainant Sunita Devi wife of Sombir resident of Rathivas above met and presented the above



mentioned application, that on finding the offence to be occurred U/s 406, 420, 34 IPC from the contents of application, CT Mument 996/Nuh is sending to police station for registration of FIR. SHO was informed about the situation. After registration of FIR number be informed. I, SI is busy in investigation. Today: Khori Bus Stand Khori Kalan Sd/- Kailash SI Chowki Khori Kalan, Police Station Tauru Dt. 03.07.2024 at 03.35 PM. Today at Police station: - After receiving the above note through Constable Mukesh No.996/Nuh, FIR No. 179 Dated 03.07.2024 registered U/s 420, 406, 34 IPC at Police Station Sadar Tauru. After preparing the copies of FIR from Computer on CCTNS, the same will be sent to Illaqa Magistrate and higher officers for information. Original copy is sending to IO through special messenger.'

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 as there is no allegations of taking money against the petitioner. He submits that the main accused has already been granted concession of bail and investigation in this matter is complete as challan stands presented on 07.11.2024 charges stands framed on 16.01.2025 out of 20 prosecution witnesses, none has been examined so far which is sufficient to say that the conclusion of trial is likely to take considerable time, moreover, the antecedents of the petitioner are clean as he is not involved in any other case, therefore, prays for grant of regular bail to the petitioner.

**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 4 months and 21 days.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that the petitioner along with her family members induced the complainant and other persons 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. 4 months and 21 days, the main accused has already been granted concession of bail by this Court, 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, whereas in the instant case, challan stands presented on 07.11.2024 charges stands framed on 16.01.2025 out of 20 prosecution witnesses, none has been examined so far which is sufficient for this Court to infer that the conclusion of trial is likely to take considerable time and therefore, 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. Decision:

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

04.02.2025
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>