



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

239

CRM-M-5261-2025
DATE OF DECISION: 04.02.2025

ROKIN AND ANOTHER

...PETITIONERS

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Imtiyaz Hussain, 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 BNSS 2023 for grant of regular Bail to the petitioner in FIR No.01 dated 01.09.2022 (Annexure P-1), under Sections 419,420,467,468,471,383 & 34 IPC 1860, P.S. Cyber Crime, Sirsa, District Sirsa, (Annexure P-1).

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

‘FIRST INFORMATION CONTENTS:-To, Mr. SHO Sir, Police Station Cyber crime, Sirsa. Subject:- Action to be taken and case to be filed against Rahul Sharma Mo.No. 81302-09422 and Gaurav Malhotra Mo.No. 96505-31572 and their colleagues for doing fraud of Rs 2408500, and threatening to kill Sir, the applicant requests the following that: 1. The



applicant is a peace-loving and law abider person and the applicant has retired from the post of Principal from a government school in the year 2016 and the applicant is a dignified and respected person of the society. 2. It is that on Tuesday, 16.08.2022 days, at around 10:00 am when the applicant was in the house no. 115 Street No. 3 Court Colony Sirsa, at that time a voice call came from an unknown mobile number 96505-31572 on the mobile number 79887-95641 and the man who was talking from the other side, his name Gaurav Malhotra SHO cyber cell and started telling the applicant that a pornographic video of the applicant has been uploaded on YouTube and a complaint has come to us and has to talk to the applicant, hearing this, the applicant's senses flew away because the applicant is a respected person on whom the applicant said to the above person who had told his name Gaurav Malhotra that there is no such video of him, on which the accused Gaurav Malhotra made a whatsapp call to me from another mobile phone and showed a video clip and said that this porn video is yours, on which I was seen with a naked girl like me, which I was nervous to see when I asked for this video, he said that we cannot give you this video till it's enquiry. On which the person started saying that if you want to delete this video, then for that you will have to contact YouTube officials and a whatsapp call came on the no. of applicant mobile number from 8130209422 on which Rahul Sharma the concerned officer of YouTube was speaking who told the applicant that if you want to delete your video from YouTube, then you will have to put our fees 31,500/- in the bank account to get video deleted, on which the applicant said that you first send me this video of which you are talking about, then he started telling the applicant that you have to talk to cyber cell about this video because the applicant is a dignified man and in the panic that the fake video of the applicant in the society does not go viral. The applicant did not see any other way. The above guilty Gaurav and Rahul had scared the applicant so much that the applicant told the accused Rahul that



he will deposit the money but you quickly delete fake videos. On which the guilty Rahul sent an account number from the above mobile number to the applicant, whose account number 673701502945 Bank ICICI Branch Alwar, IFSC Code ICIC0006737 account holder's name is named to deposit Rs 31,500/- in the account of Deepak Saini and asked to deposit money in the account after getting it done, send him a photo of the receipt of the bank, on which the applicant has given his bank account S.B.I. Account no. 30223170432 to 31,500/- Rs. After getting the receipt, the applicant made whatsapp call Shortly after sending the money, the applicant got a call from Rahul Sharma, that there are 4 other videos and to get them delete, you will have to submit Rs. 1,26,000/- for which he has an account no. 50100432296157 Bank HDFC, IFSC Code HDFC0003634 Branch Branch Zone Sector-46 was given to the applicant to deposit the amount in the account of account holder Sonu Meena, on which the applicant did not see any other feed, and deposited Rs. 1,26,000/- from his account number 30223170432 from mini Secretariat and after getting the receipt, it was whatsapp to the accused. 3. That after that Rahul Sharma told the applicant by calling a voice call that you will also have to delete this video from Instagram, Facebook, WhatsApp and you have to deposit a fee of Rs 2,51,000/-. Due to which the video will be permanently blocked, on which Rahul Sharma accused did whatsapp the account to the the applicant and account number 921010020198087 AXIS Bank, IFSC Code Utib0001081 Branch Gurugram which is named in the name of the account holder Shidhdesvar DNYANOBA MUNDHE, Rs 2,51,000/- from his Bank Punjab National Bank City Police Station Sirsa Branch Account No. 3326009900000107 got RTGS in the above account, whose U.K. TR Number is PUNBR 52022081615457190 receipt was made whatsapp to Rahul Sharma 4. That after this the accused Gaurav Malhotra spoke in the name of a person from his above mobile saying that this is the Superintendent of Police and you have to pay Rs 5 lakh in



the adjection to get this work done, only then the complaint that have come against you will be close and deposit Rs. 5 lakh by the applicant in account no. 50100525221910 IFSC Code HDFC0004849 Branch Nowgong account holder name was Bablu Prajapati, on which the applicant from his account no. 3326009900000107 deposited to Rs 5 Lakh and the receipt number punbr5022081615462272 sent the above accused on WhatsApp. 5. That after that the applicant was told that we have arrested a boy, the team is going to arrest the girl who is in the video, after this, around time 1:00 pm on 17.08.2022, the applicant received the call from the person who had told his name Gaurav, called the phone call and told that the girl we were telling about had committed suicide and started saying that 20 lakh rupees to set the media, doctor and girl's family members. If the applicant refused to give it, then with the intention of winning the trust of the applicant, he started saying that he will returns all his money which had taken from him and get arrest warrant after sending CBI team and the media will be found standing at your house, on which the applicant started to intimidate by sending a photo of a corpse and threatened to 10 years of imprisonment. Seeing no other fodder on this, the applicant made a bank account sent by him at the behest of the above guilty Gaurav 921010014839970 account holder Vidyasagar Kumar IFSC Code Utib0000873 Axis Bank Branch asked to deposit the amount in Bihar Sharif and said that within 1 hour, of deposit of the money, which the applicant gave from his bank account in PNB account number City Police Station Road Branch Sirsa From 3326009900000107, Rs 15 lakh in the above account RTGS Submitted under the UTR No. is PUNBR52022081715499981 After which a person named Gaurav Malhotra sent a photo on the WhatsApp of the applicant and said that CBI has removed your name. When I saw the letter, it seemed to be false and fake only by seeing this, because it was written completely wrong, on which the applicant understood that the applicant understood that he was threatened to make the



pornographic video viral. Money has been taken from him, on which the applicant gave information about not transferring the amount from his bank account to another bank account. Therefore, it is requested that the above accused persons Rahul Sharma mobile no. 8130209422. Gaurav Malhotra Mobile no. 9650531572 and other accused who are involved in this entire case, should be arrested immediately by filing a case against them and the applicant's money should be returned and the applicant should be given justice. It will be so kind of you. SD Surrender applicant Surendra Arya son Shri Nityanand resident M.N. 115, street no. 3 Old Court Colony, Sirsa. Mobile no 7988795641 Dinak 01/09/2022'.

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioners has argued that the petitioners have been falsely implicated in the present case. He submits that the name of the petitioners were nominated on the basis of the disclosure statement of co-accused and their name was not mentioned in FIR. He further submits that there was enmity of the petitioners with co-accused Munfai who took their names in the disclosure statement. He points out that challan in the present FIR stands presented on 31.10.2022 charges are yet to be framed, and there are 15 prosecution witnesses to be examined, which is sufficient for to infer that the conclusion of trial is likely to take considerable time, therefore, prays for grant of regular bail to the petitioners.

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 petitioners, which are taken on



record. According to which, the petitioners are behind bars for 2 month and 1 day.

Learned State Counsel on instructions from the Investigating Officer opposes the prayer for grant of regular bail stating that there are allegations of impersonation as a police officer and withdrawing of money from other's bank account, moreover, petitioner-Rokin is involved in one more FIR, meaning thereby, he is a habitual offender, 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 petitioners have already suffered sufficient incarceration i.e. 2 month and 1 day, the petitioners were named on the basis of the disclosure statement of co-accused 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 in the present FIR stands presented on 31.10.2022 charges are yet to be framed, and there are total 15 PWs which are yet to be 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.

As far as the pendency involvement of the petitioner-Rokin in other FIR is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “**Baljinder Singh alias Rock vs. State of Punjab**” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal

antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioners are directed to be released on regular bail on their 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>