

2025:PHHC:038551



227

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-8364-2025

DECIDED ON: 20.03.2025

PHOOL KUMAR

....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Chaudhary, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked seeking regular bail to the petitioner in FIR No. 0033, dated 29.01.2024, under Sections 120-B, 419, 420, 467, 468 of IPC, 1860 (Section 471 IPC added later on) registered at Police Station Sector 5, Panchkula (Annexure P-1).

2. Facts

Facts as narrated in the FIR reads as under:-

“Respected Sir, duplicate copy of the application is as follows:- Ref. No. PPDWA/2024/03 Dated 29/01/2024 To The SHO, Sector-5, Police Station, Panchkula. Sub:- Trespassing of House No.794, Sector-21, Panchkula Sir, I Rajesh Dhanda, President of Panchkula Property Dealers Welfare Association bring in your kind notice that the someone was trying to sell the House No.794, Sector-21, Panchkula, Haryana. That the House 794, Sector-21, Panchkula, Haryana was on sale in the market. It was being quote by three persons namely i.e. Wazir Singh, Ajay Kumar and Phool Kumar. These persons were

imposing as Sellers on the behalf of the owner of House No.794, Sector-21, Panchkula, Haryana. We verifying the documents we found that they are carrying duplicate papers, we got suspicious. We tried to verifying the facts we found that the owner of the said House is NRI. He has not put his house on the sale and has not appointed any authorised person to sell his property. We tried to catch these imposter, we arranged a meeting in Hotel Cove, Sector-5, Panchkula, Haryana for the finalization of the deal. These three persons came for further finalization of the deal. We called the police and handover them to the police for further investigation. (Sd/- Rajesh Dhanda) Rajesh Dhanda, President, Panchkula Property Dealers Welfare Association, Haryana. Mob. No.9876132233. Police Proceedings:- Today I, ASI alongwith Constable Si Murari Lal No.83/Panchkula, HGH Kamalpreet No.388/ Ambala was present at Yavnika Park, Sector-5, Panchkula and going for patrolling for suspicious persons due to strike and information was received that a fake deal of selling property was taking place in The Cove Hotel, Sector 5, Panchkula and on that information ASI alongwith colleague employees reached at The Cove Hotel, Sector 5, Panchkula where Rajesh Dhanda President, Panchkula Property Dealers Welfare Association, Haryana, Senior Vice President Yogesh Gupta, Vice Chairman Ashok Panwar, Praveen Kumar Walia were found present. Where above-mentioned Rajesh Kumar President was given written request/application, duly signed and stamped copy of DEED OF CONVEYANCE dated 29 May, 2008 going into 13 pages, one copy of fake Aadhar Card No.2247 1831 9399 Ravidutt Sharma and one original Aadhar Card No.5801 0120 5355 of Wazir Singh, photocopy of one PAN Card THE NO.FDHKS7659U Ravidutt Sharma and Wazir Singh son of Late Sh. Bhagwan Singh, resident of House No.93, Village Badanpur, Police Station Narwana, District Jind, Ajay Kumar son of Dara Singh, resident of House No.360, Sector 45, Burail, Chandigarh and Phool Kumar son of Rameshwar, resident of Village Khedi Taloda, Police Station Pillu Khera, District Jind were presented. Copy of DEED OF CONVEYANCE alongwith documents

as per reason were taken into custody by the Police. List of recovered document i.e. Deed of Conveyance was prepared separately. On the list of documents and on the statements signatures of accused alongwith witnesses were taken and higher officials was also informed through telephonic conversation about the same. The contents of the FIR, above- mentioned documents offence under Section 419, 420, 467, 468, 120-B of IPC were found out against the accused persons and after registration of the case copy of the same are sent to the Police Station through HGH Kamalpreet No.388/Ambala and after registration of the case the intimation was given regarding the same. 1 ASI alongwith colleague employees was busy in investigation of the case. Today on 29.01.2024 time around 10:00 P.M. above-mentioned complaint was received at The Cove Hotel, Sector 5, Panchkula, Police Station Sector-5, Panchkula, District Panchkula to HGH Kamalpreet No.388/Ambala and from the perusal of the same the offences under Section 419, 420, 467, 468, 120-B were inade about and FIR No.33 dated 29.01.2024 under Section 419, 420, 467, 468, 120-B IPC, Police Station Sector 5, Panchkula was registered and original and copy of the complaint was handed over to HGH Kamalpreet No.388/Ambala for further investigation. Copies of First Information Report was prepared and sent before the higher officials through e-mail or through post. Phone Mahagement Officer was of informed about the condition of the case.”

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 the present FIR is based upon the allegations related to attempt to sell the property. He submits that the case is based upon the documentary evidence and all the documents are in possession of the police. He further submits that co-accused namely Anil Kumar has been granted concession of interim anticipatory bail by the Supreme Court vide order dated 14.06.2024 (Annexure P-2) and another co-accused namely Ajay Kumar has

already been granted the concession of regular bail vide order dated 05.11.2024 (Annexure P-3) passed by this Court in CRM-M-53446-2024.

Notice of motion.

On behalf of the State

At the asking of this Court, Mr. Chetan Sharma, DAG, Haryana appearing on advance notice accepts the same on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. As per the custody certificate the petitioner has undergone the custody for a period of one year, one month and 18 days, as of now. He on instructions from the Investigating Officer opposes the prayer for grant of regular bail but is not in a position to controvert the submissions made by counsel for the petitioner.

He informs this Court that the petitioner is also involved in another case under NDPS Act, meaning thereby, he is not a person of clean antecedents.

To counter the afore-said fact, learned counsel for the petitioner submits that though the petitioner is involved in another case also but in that case he is on bail.

4. Analysis

Considering the custody period suffered by the petitioner i.e. 1 year, 1 month and 18 days as well as the fact that the entire case is based upon documentary evidence, which is already available with the investigating agency coupled with the fact that investigation is completed and after framing of charges on 20.05.2024, out of total 18 prosecution witnesses only one has been examined so far, meaning thereby conclusion of trial shall take considerable time, no useful purpose would be served by keeping the petitioner behind the bars for an indefinite period, which would curtail right of the petitioner for speedy trial and expeditious disposal, as enshrined under Article 21 of the Constitution of India as

has been time and again discussed by this Court, while relying upon the judgment of the Apex Court passed in ***Dataram Singh vs. State of Uttar Pradesh & Anr.*** **2018(2) R.C.R. (Criminal) 131**. 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 basic

and 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. Relief:

In view of the discussions made hereinabove, the petitioner is hereby directed to be released on regular bail on furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

In the afore-said terms, the present petition is hereby allowed.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

20.03.2025
sham/anuradha

(SANDEEP MOUDGIL)
JUDGE

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