



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11290-2025
DECIDED ON: 24.04.2025

LUCKY BENIWAL ALIAS AKASH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sushil Sheoran, Advocate
for the petitioner.

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

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 483 of Bharatiya Nagarika Suraksha Sanhita, 2023 for grant of regular bail in FIR No.181 dated 1.8.2024 under sections 406/420/506 (section 467/468/471/120-B added later-on) of Indian Penal Code, 1860 registered in Police Station Industrial Area Bhiwani, District Bhiwani.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“SP OFFICE BHIWANI DAIRY NO 116-PG DATED 13.5.2024, To Superintendent of Police, Bhiwani. Subject: Application for taking legal action against the following, 1. Gaurav son of Sh. Vinod caste Rajput, resident of village Paluwas, Tehsil and District Bhiwani, 2. Kapil son of Sh. Vedpal, 3. Lucky son of Udaybir Singh @ Udda caste Jaat, residents of village Kaluwas, Tehsil and District Bhiwani, 4.

Devender Singh Jaat, son of Sh. Jabir Singh Jaat, resident of Aavas Nagar Colony, District Devas (Madhya Pradesh)-455001; Kapil-9728462842, Devender-7974053687, 6232538598. Respected sir, it is requested that we 1. Amarjeet son of Sh.Naresh, resident of village Paluwas, Tehsil and District Bhiwani, 2. Praveen Kumar son of Sh. Sube Singh, resident of village Garhi, Tehsil Hansi, District Hisar, 3. Sachin Sharma, son of Sh. Ram Bhagat Sharma, resident of Hunamal Pyao, Bhiwani, Tehsil and District Bhiwani and 4. Rinku son of Sh. Dharambir, resident of village Paluwas, Tehsil and District Bhiwani, are law-abiding and peace-loving individuals. The above-mentioned accused Gaurav who is co-villager of Amarjeet and Rinku and therefore knows to us well. Accused Gaurav told us that he would arrange the work visas for Kuwait and send us to Kuwait for which we all would have to pay some money to get the visas arranged and secure jobs in Kuwait. We all agreed to get the visas and work in Kuwait. The above-mentioned accused Gaurav in collusion with the other accused prepared an agreement/contract in the name of the accused Devendra Jat. The accused took the following amounts from us:- Rs.3,50,000 in cash from Praveen Kumar on 22-03-2024, Rs.2,50,000 in cash from Amarjeet on 05-01-2024, a total of Rs.3,50,000 from Sachin Sharma of which 71,00,000 was transferred via PhonePe to mobile number 7067372972 on 22-03-2024 and Rs.2,50,000 in cash, Rs. 2,50,000 in cash and 240,000 via Google Pay to mobile number 7027462693 from Rinku on 26-03-2024. After that, the accused sent Praveen to Dubai through a tourist visa on 23-04-2024 and the accused Gaurav also went with him to Dubai. Subsequently, the accused sent Amarjeet to Dubai on 24-04-2024. Upon arriving in Dubai, our passports were confiscated and we were taken to an unknown location. Subsequently, no job was provided to us and we were under mental and physical harassment and after that, we barely managed to save our lives and returned on 05-05-2024. Afterward, we met the accused Kapil and Lucky and demanded our money back. In

response, Lucky said that his father is an ASI in the Haryana Police and that the police cannot do anything to them. He also stated that once they take money from someone, they never return it. Thus, the accused through a conspiracy and fraud took money from us by making false promise to get jobs for us in Kuwait and now they are blatantly refusing to return our money and are threatening to kill us openly. We also have a video when we gave money to the accused Kapil and Gaurav. When the police give us permission, we will present this video in front of them. Regarding this, we had submitted a complaint against the accused at the Police Station Industrial Area Bhiwani but the police have not taken any action against accused till date. Therefore, we humbly request that strict legal action be taken against the above-mentioned accused and register a case of cheating and fraud for extorting money under the false pretext of sending the abroad.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner contends that there is no allegation in the FIR that the petitioner received any money from the complainants. However, during the investigation, it was discovered that an amount of Rs. 58,000/- was transferred to the petitioner's account by co-accused Devender. This amount has already been recovered by the police. It has been further contended that the petitioner is a boxing player, and co-accused Devender was the organizer of one of the matches in which the petitioner participated and the petitioner played that match for a consideration of Rs. 58,000/-, which was subsequently transferred to his account by Devender, therefore, he is not a beneficiary to the alleged transaction. It has been contended on behalf of the petitioner that he is a man of clean antecedents as he is not involved in any other case.

On behalf of the State

On the other hand, learned State counsel has produced the custody certificate of the petitioner today in Court, which is taken on record. He does not controvert the fact that the amount alleged to have been credited in the account of the petitioner stands recovered. He further submits that after completion of the investigation, challan stands presented to Court on 07.04.2025, charges are yet to be framed and total 14 prosecution witnesses are yet to be examined.

4. Analysis

Be that as it may, considering the custody period undergone by the petitioner i.e. 03 months and 09 days added with the facts that the amount credited in the account of the petitioner stands recovered by the police; he is not the beneficiary to the alleged transaction; the petitioner is a man of clean antecedents as he is not involved in any other case, as is evident from custody certificate produced today in Court added with the fact that investigation is complete, wherein challan stands presented to Court on 07.04.2025, charges are yet to be framed and total 14 prosecution witnesses are yet to be examined, which is suffice for this Court to infer that the conclusion of trial shall take considerable time, this Court is of the considering view that detaining the petitioner behind the bars for an indefinite period would serve 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 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 him 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.

24.04.2025

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No