IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203 CRM-M-26045-2024
DATE OF DECISION: 07.02.2025

VANITA VISHAL ...PETITIONER

Versus

STATE OF PUNJAB ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gulzar Mohammad, Advocate for the petitioner(s).

Mr. Jaspal Singh Guru, AAG, Punjab.

Mr. Anurag Arora, Advocate for the complainant.

***

SANDEEP MOUDGIL, J (ORAL)

CRM-5128-2025

This application has been filed for placing on record the copy of medical record regarding undergoing treatment of petitioner as well as birth of child (Annexure P-12) and exemption from filing the typed/certified more legible copy of the annexure.

For the reasons mentioned in the application and keeping in view the submission made by counsel for the applicant, the application is allowed and the the copy of medical record regarding undergoing treatment of petitioner as well as birth of child (Annexure P-12) is taken on record.

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1. **Relief Sought**

This petition has been filed under Section 439 Cr.P.C. for grant of bail to the petitioner in FIR No. 65 dated 06.04.2024 under Sections 406/420/120-B IPC, registered at P.S. Sadar Jalandhar, Commissionerate.

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

> *'Reference application No.228-DCP dated 12.01.2024 from Varinder Singh son of Sh.Mukhtiar Singh, Project Director, AGI Infra Ltd. SCO 1-5, Urbana, Jalandhar Heights-II Village Phaullarwal 66 Feet Road, Jalandhar. To Hon'ble Commissioner of Police, Jalandhar. Subject: Complaint against (1) Rohit son of Sh.Piara Ram (Mobile No.7696928152), 2. Vinita Vishal wife of Sh.Rohit residents of B-1/727, Ram Nagar Jalandhar (3) Kamal son of Sh.Piara Ram for playing fraud and cheating with the company of the applicant M/S. AGI Infra Ltd. SCO 1-5, Urbana, Jalandhar Heights-II Village Phaullarwal 66 Feet Road, Jalandhar. Sir, it is humbly submitted that 1) that complainant is the Project Director of AGI Infra Ltd. SCO 1-5, Urbana, Jalandhar Heights-II Village Phaullarwal 66 Feet Road, Jalandhar and is well aware of the facts of the complaint and competent to file complaint on behalf of above company. 2) That the above company AGI Infra Ltd. Deals in the property its residential, plots, flat etc. and other business projects have been constructed and are being constructed at Jalandhar and other areas of Punjab. 3) That Rohit son of Sh.Piara Ram was given job in above company AGI Infra Ltd. About 5 years back and he was working as Senior Sales Executive. Wife of above Rohit namely Vinita Vishal was also working in this company as Receptionist since long. Above Rohit used to talk to the customers directly on behalf of company regarding properties of the company and sale of flats. The company had authorized above Rohit to fix the conditions of sale of the property and to receive the sale amount for the company from the purchaser. 4) That above Rohit did fraud with our company in January, 2023 and after this he had given a written apology to the company, copy of which is attached. After his apology company did not shunt out Rohit from the company on compassionate grounds and above Rohit continued on his post in the Company. 5) that after some time, company received a complaint against above Rohit upon which he was*

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shunted out from the Company in July, 2023. Thereafter company also came to know about the frauds played by him and his family members. In this regard, police had also registered FIRs against above Rohit and his wife Vanita Vishal and family members. Copies of the FIR are attached. (6) That one customer of company namely Jasbir Kaur had purchased 2 Flat 804 ft and 501 N Smarthomes-II. One day she came to the employee of the company and said that she had made payment of Rs.6.5 lacs each for the flat through two RTGS transactions and she has come to take receipts of the same. Upon which, the employee of thecompany checked the record of the company and came to know that above Rohit has deposited amounts of RTGS done by Jasbir Kaur in the name of one Kamal in three flats and have issued 3 receipts in his name, the details of which is as under: In Flat No.801-B, Jal-H-III vide Receipt No.2174 dated 13.05.2023 IDFBR 52023050800630908 SBI-716 dated 08.05.2023, in Flat No.1101E, SH-II, 2 BKH and Flat No.1602E, SH-II 2 BHK two receipts of Rs.3.25 lacs each having No. 1268 dated 13.05.2023 SBI 716 dated 08.05.2023 and Receipt no.1269 dated 13.05.2022. The company perused more record regarding these flats and came to know that the two RTGS of Rs.6.5 lacs each done by Jasbir Kaur have not been deposited in her flat and Rohit and Vinita Vishal have got deposited above said entire amount in above 3 Flats No.801-B, Jal-H-III, No.1101E, SH-II, 2 BKH and Flat No.1602E, SH-II 2 BHK. 7) That when we asked more about this matter from above Jasbir Kaur, then she told that she had demanded receipt from Rohit, upon which Rohit and Vinita Vishal assured her that your receipts would be issued and would reach you, which were not given to her. Upon which she came to Company and demanded receipts. 8) That thereafter when Company more perused the record of these three flats then came to know that Rohit and Vinita Vishal had got booked on flat No.402E of one Resham Kaur in Flat No.801B and its payment of Rs.4 lacs made through RTGS is also fraudulently booked in the name of Kamal in Flat No.801-B, Jal-H-III and receipt No.1932 dated 05.09.2023 has been issued in the name of Kamal and when Resham Kaur was contacted then she also told that hehad got RTGS of Rs.4 lacs for her Flat No.402 and she also when contacted Rohit for receipt then he assured her that receipt will reach her, which did not receipt till date. 9) That thereafter another customer Ankur Kulhari had also given a complaint to the company in which she had demanded his amount of Rs.3.5 lacs done through RTGS back on cancellation of his booking of flat. When company perused his record of RTGS, then came to know that above RTGS of Rs.3.5 lacs has also been issued in the name of Kamal in Flat No. 1602E, SH-II, 2BHK. Upon which company inquired

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about above said Kamal then it revealed that above Kamal is the real brother of shunted out employee from company due to fraud with company, namely Rohit and devar of Vinita Vishal. 10) From this it is clear that Kamal is also accomplice of Rohit and Vinita Vishal in this fraud and above three in connivance with each other have played fraud with the company and its customers under a well-planned conspiracy. From this it reveals that these three persons had intention of playing fraud since the beginning due to which these persons also got deposited the amount of other customers in the flat of Kamal with bad intention. Photostat copies of agreement and receipts are attached. 12) That above Kamal sent an email dated 11.12.2023 on the e.mail of the company and asked about the process of refund of money of flats from the company from which it becomes clear that the amount of above said persons were fraudulently got deposited by Kamal in connivance with Rohit and Vinita Vishal in the three flats got booked by him and Rohit had issued forged receipts in favour of Kamal also. He intends to misappropriate said amount by takingrefund in connivance with Rohit and Vinita Vishal. As such, it is requested to you to take appropriate action against above accused for playing fraud with our company AGI Infra Ltd. and issuing forged receipts, in connivance with each other. I shall be thankful to you. Sd/- in English Varinder Singh son of Sh.Mukhtiar Singh, Project Director AGI Infra Ltd. SCO 1-5, Urbana, Jalandhar Heights-II Village Phaullarwal 66 Feet Road, Jalandhar, 9779935330, upon which higher officers wrote 'ADCP-2 Verify and report and take n/a as per law' dated 12.01.2023. Upon which, ADCP-2, Jalandhar wrote in his report that from the inquiry conducted by me, I have arrived at a conclusion that Rohit son of Piara Ram and his wife Vinita Vishal were working in company AGI Infra Ltd. SCO 1-5, Urbana, Jalandhar Heights-II Village Phaullarwal 66 Feet Road, Jalandhar as Senior Sale Executive and Receptionist, respectively about 05 years back. Rohit used to talk to the customers directly on behalf of company regarding properties of the company and sale of flats. The company had authorized above Rohit to fix the conditions of sale of the property and to receive the sale amount for the company from the purchaser. Rohit and Vinita had earlier also done embezzlement of money with the company and an FIR No.188 dated 19.10.2023 under Sections 406, 420 IPC, PS Sadar, FIR No.191 dated 20.10.23 under Sections 420, 465, 467, 468, 471, 120-B PS Sadar and FIR No.198 dated 01.11.2023 under Sections 40, 420, 465, 467, 468, 471, 120-B IPC PS Sadar, Jalandhar are already registered against Rohit, Vinita Vishal and their other accomplices, due to which they were thrown out of job. Customer of company namely Jasbir Kaur had made

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payment of Rs.6.5 lacs each for the two flat i.e. 804 and 501 B Smart House-2 through two RTGS and on checking of record of the company it revealed that said amounts of RTGS done by Jasbir Kaur has been deposited in the name of one Kamal in three flats and 3 receipts have been issued in his name which were of Flat No.801-B, Jal-H-III vide Receipt No.2174 dated 13.05.2023 IDFBR 52023050800630908 SBI-716 dated 08.05.2023. Flat No.1101E, SH-II, 2 BKH and Flat No.1602E, SH-II 2 BHK two receipts of Rs.3.25 lacs each having No.1268 dated 13.05.2023 SBI 716 dated 08.05.2023 and Receipt no.1269 dated 13.05.2022. The two RTGS of Rs.6.5 lacs each done by Jasbir Kaur have not been deposited in her flat and Rohit and Vinita Vishal have got deposited above said entire amount in above 3 Flats No.801-B, Jal-H-III, No.1101E, SH-II, 2 BKH and Flat No.1602E, SH-II 2 BHK. On demanding the receipts Rohit and Vinita Vishal assured her that her receipts would be issued and would reach her, which were not given to her. Flat No.402E was booked by she made payment of Rs.4 lacs through RTGS and she was not given any receipt and was assured that receipt will reach her. Thereafter another customer Ankur Kulhari had also given a complaint to the company for return of Rs.3.5 lacs paid by him through RTGS on cancellation of his booking of flat. On perusal of record of RTGS, it revealed that above RTGS of Rs.3.5 lacs has also been issued in the name of Kamal in Flat No. 1602E, SH-II, 2BHK. Company inquired about above said Kamal then it revealed that above Kamal is the real brother of shunted out employee from company due to fraud with company, namely Rohitand devar of Vinita Vishal. That above Kamal sent an email dated 11.12.2023 on the e.mail of the company and asked about the process of refund of money of flats from the company from which it becomes clear that the amount of above said persons were fraudulently got deposited by Kamal in connivance with Rohit and Vinita Vishal in the three flats got booked by him and Rohit had issued forged receipts in favour of Kamal also. From the perusal of record obtained from Punjab National Bekhan Phollriwal and SBI Jalandhar Heights it revealed that AGI Company's customers Jasbir Kaur, Resham Kaur and Ankul Kulhari had transferred amount in the Bank Account of company for their respective flats, but Rohit and Vinita Vishal issued receipts of these amounts in the name of Kamal for Flat No.801-B, Jal-H-III, Flat No.1101E, SH-II 2BHK & Flat No.1602E, SH-II 2 BHK. From the statements of complainant and Jasbir Kaur wife of Kulbir Singh resident of Flat No.604, Palace-1, 66 ft road Jalandhar Heights, Balwinder Singh Sandha son of Niranjan Singh resident of House No.11, Guru Teg Bahadar Nagar, Kapurthala, Resham Kaur wife of late Harbans Singh resident of

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House No.ES-499, Mohalla Abadpura, Jalandhar, Ankur Kulhari resident of C-504, Jalandhar Heights-11, 66 ft. road, Jalandhar and documents produced, it reveals that Rohit, Vinita Vishal and Kamal in connivance with each other have played fraud with the company by issued fake receipts in favor of Kamal in respect of the money deposited by the customers for flats of the company. 14. Recommendations: Rohit son of Piara Ram, Vinita Vishal wife of Rohit and Kamal son of Sh.Piara Ram residents of B-1/727, RamNagar Jalandhar, in connivance with each other have played fraud with company by depositing the money of the customers of various flats in the Flat No.801-B, Jal-H-II, Flat No.110E, SH-II, 2 BHK & Flat No.1602E, SH-II 2 BHK of Kamal. It is recommended to register case under Sections 406, 420, 120-B IPC, at PS Sadar Commissionerate, Jalandhar against them. Sd/- in English Additional Deputy Commissioner of Police-2 dated 01.04.2024, upon which Hon'ble Commissioner of Police, Jalandhar wrote 'Approved' and signed in English. Today at Police Station: On receipt of above complaint along with inquiry report through post in the police station, this FIR under above mentioned sections against above said persons has been registered and original complaint along with Inquiry Report, documents and copy of FIR is being sent to Sl Sarabjit Singh 2345 to In charge Chowki Jalandhar Heights through Dak. Control Room is being informed. Closure Rapat No.02 dated 06.04.2024.'

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 she was not named in the FIR earlier but was roped in the present case by the complainant company on false allegations. As per the alleged allegations, the petitioner along with other co-accused hatched the conspiracy and played fraud upon the complainant company.

He submits that the petitioner has given birth to a female baby on 17.09.2024 and is still under treatment on account of delivery of child. He prays for grant of regular bail to the petitioner as investigation in this case is complete as challan stands presented on 11.06.2024 and charges are framed on 29.10.2024 and out of total 22 prosecution

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witnesses, one PW has given up and one PW has been examined so far which is sufficient for to say that the conclusion of trial is likely to take considerable time.

On behalf of the State and complainant

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 2 months and 27 days.

Learned State Counsel on instructions from the Investigating Officer and counsel for the complainant opposes the prayer for grant of regular bail stating that the petitioner along with co-accused persons committed fraud of Rs. 3 crores with the complainant company and the petitioner was the beneficiary of Rs. 4 lakhs which were credited in her account. They further submit that on the basis of the disclosure statement of her own husband Rohit, the petitioner was arrayed as an accused vide DDR no. 36 dated 17.04.2024.

Learned counsel for the State further points out that the petitioner is a habitual offender as she is involved in other FIRs also, therefore, prays for dismissal of the petition.

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. 2 months and 27 days, and she is under treatment due to delivery of a child, moreso, nothing is to be recovered from her, 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,

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challan stands presented on 11.06.2024 charges stands framed on 29.10.2024 out of 22 prosecution witnesses, one PW has given up, one PW 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*

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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

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> *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 of other cases and involvement of the petitioner

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in other cases 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 petitioner is directed to be released on regular bail on her 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

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

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